



# **Equality**

## **for Lesbians and Gay Men**

**A Relevant Issue in the EU Accession Process**  
**A Report by ILGA - Europe - 2001**

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## ILGA-Europe

The International Lesbian and Gay Association (ILGA) was founded in 1978 and is a world-wide federation of more than 300 groups and organisations in more than 70 countries on all continents fighting for equal rights for lesbian, gay, bisexual and transgendered people. In December 1996, ILGA-Europe became the first regional association of ILGA to be formally established.

During its 23 years of existence, ILGA has called for and carried out numerous campaigns for law reform in many countries and against individual cases of discrimination, highlighting many cases of human rights abuses against lesbians and gays.

Major successes of ILGA's lobbying on the international level include the deletion of "homosexuality" from the World Health Organization's International Classification of Diseases, and the decision of Amnesty International to adopt persons imprisoned solely on the grounds of their sexual orientation as prisoners of conscience.

ILGA has undertaken sustained lobbying of many international organisations, such as the United Nations, the Organization for Security and Co-operation in Europe (OSCE) and, in particular, the Council of Europe and the European Union. In the last four years, ILGA-Europe has intensified its lobbying activities with the two latter organisations in Strasbourg and Brussels. The inclusion of "sexual orientation" in Article 13 TEC and in the non-discrimination clause of the EU Charter of Fundamental Rights were two of many positive results to which ILGA Europe contributed at EU level. ILGA-Europe has also worked for the adoption of the first measures based on this Article 13.<sup>1</sup> It has also carried out several EU-funded projects, and in 2000 received, for the first time, core funding from the European Commission. In 1998, ILGA-Europe was granted consultative status with the Council of Europe. More and detailed information about these

activities is available at ILGA-Europe's web-site [www.ilga-europe.org](http://www.ilga-europe.org).

ILGA has also given impetus and support to gay and lesbian groups in, for example, Latin America and South Africa, and not least played an important role in the emergence and development of the first gay and lesbian organisations in the former "East-Bloc". ILGA's support for activists and groups in these countries dates back to 1982 when its Vienna-based member *Homosexuelle Initiative (HOSI) Wien* started the Eastern Europe Information Pool (EEIP) on behalf of ILGA. It reached out to activists in these countries, facilitated information exchange, supported activities such as the production and circulation of gay *samisdat* newsletters in Polish, and put together annual activity and news reports. It published a first book on the situation of lesbians and gays in Eastern Europe<sup>2</sup> and helped organise the first ILGA sub-regional conferences for Eastern and Southern Europe which took place even before the lifting of Iron Curtain and the fall of the Berlin Wall. The first was organised in Budapest in 1987, and nine more were to follow: Warsaw 1988, Budapest 1989, Leipzig 1990, Prague 1991, Bratislava 1992, Vienna 1993, Palanga/Lithuania 1994, Kiev 1995, and Ljubljana 1996.

ILGA's first regional conference for Europe ever held in a former "East-Bloc" country was organised by its Latvian member LASV in Riga in 1995. ILGA-Europe's annual conference in 2000 was hosted by ACCEPT in Bucharest.

In all these years, ILGA and ILGA-Europe have tried to support the lesbian and gay movement in these countries as much as its own resources and possibilities allowed it to do so.

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<sup>1</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303/16, and Council Decision 2000/750/EC of 27 November 2000 establishing a Community action programme to combat discrimination (2001-2006), OJ 2000 L 303/23.

<sup>2</sup> HOSI Wien/Auslandsgruppe (Gudrun Hauer, Kurt Krickler, Marek, Dieter Schmutzer – eds.): *Rosa Liebe unterm roten Stern. Zur Lage der Lesben und Schwulen in Osteuropa*. Frühlings Erwachen, Hamburg 1984.

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**The Executive Board of ILGA-Europe,**  
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## Introduction

Three years after the publication of the “Equality Report”<sup>1</sup> on the situation of lesbians and gay men in the EU Member States, ILGA-Europe has produced the current report, “Equality for Lesbians and Gay Men - A Relevant Issue in the EU Accession Process”, with a view to filling the information gap regarding the situation for lesbians and gay men in the candidate countries. The report was produced as part of the project “Lesbian and Gay People in Candidate Countries to EU Membership” with financial support from the Open Society Institute.

All 13 accession countries are represented with individual reports: Bulgaria, the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, and Turkey. A further chapter presents the European Union’s legislation and policies that are relevant to the rights of lesbians and gays in the accession countries, policies which have developed very significantly in the recent past.

As noted, this project is a response to the lack of accurate information about the status of lesbian and gay citizens in the accession countries. In filling this gap, it provides a concrete step towards the identification of areas in need of reform, and points to the strategies available for improving the situation for LGBT (lesbian, gay, bisexual and transgendered) people in the target countries in the context of European Union Enlargement. In so doing, it provides a framework both for empowering the LGBT communities and NGOs in the candidate countries to increase the effectiveness of the civil dialogue with national governments and the European Union, and for enhanced networking at local, national and international level.

To assure the structural and thematic integrity of the country reports, a common structure was used in collecting and reporting the information, based on the main issues relevant to the discrimination experienced by LGBT people: the criminal law, anti-discrimination provisions, family and partnership legislation, adoption rights and donor insemination, asylum law, employment, education, the health ser-

vice, military service, migration and asylum seekers. The authors of the country reports also tried to cover the social factors which clearly mirror the above mentioned legal factors, e. g. public opinion, homophobia, the approach of the media, violence against gays and lesbians, and the influence of churches and religions. Positive developments and information on the infrastructure of the LGBT community and culture are also reported, together with recommendations for improving the legal and social status of lesbians and gay men.

In conclusion, two things are evident from all the information presented in this book. First, it is clear that sexual orientation discrimination and homophobic attitudes are widespread in the accession countries; and secondly, that addressing this discrimination and these attitudes, is both a necessary and legitimate part of the accession process.

A precondition for accession, as set out in the Copenhagen criteria,<sup>2</sup> is the establishment of respect for human rights, including the protection of minorities. Moreover, Article 6 (2) EU provides that: “the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms”. It is clear that, as a minimum, the accession countries must bring their laws and practices into line with the jurisprudence of the European Convention. This jurisprudence has found repeatedly that discriminatory legal provisions and practices are in violation of the Convention. And yet, six of the thirteen accession countries, Bulgaria, Cyprus, Estonia, Hungary, Lithuania and Romania, have discriminatory provisions in the criminal law. Clearly, the repeal of these discriminatory provisions must be made a precondition for membership of the Union.

But “respect for human rights, including the protection of minorities” places obligations on governments which go beyond simply withdrawing discriminatory laws and practices. “Protection of minorities” requires positive action by government to eliminate discrimination in society more generally.

<sup>1</sup> “Equality for Lesbians and Gay Men: A Relevant Issue in the Civil and Social Dialogue” report available on the ILGA-Europe web site: [www.ilga-europe.org](http://www.ilga-europe.org)

<sup>2</sup> *Bulletin-EC*, 6-1993

Such action should include, for example, the introduction of laws prohibiting discrimination, programmes to counter violent attacks, to ensure equal access to jobs and to government services, and to educate the general public. That such positive actions to counter discrimination against a minority are a legitimate concern of the accession process has been demonstrated in some of the Commission's annual country reports, particularly in connection with ethnic minorities such as the Roma. The widespread discrimination experienced by the lesbian, gay, bisexual and transgendered communities, as identified in this book, should be no less a valid concern of the European Union in the accession process. To date, perhaps for lack of documentation, it has been largely ignored. With the publication of this book, such inaction is no longer tenable.

The most important piece of Community legislation for lesbians and gay men is Article 13 (EC) of the Treaty of Amsterdam. Chapter 14 deals in detail with the impact of this article in the context of accession. At this point, we would like to draw the reader's attention to the comprehensive guide ILGA-Europe published in 1999 on the implications of the Treaty of Amsterdam in general and Article 13 in particular in relation to sexual orientation discrimination.<sup>3</sup>

ILGA-Europe believes that a "Europe of citizens" can only be built upon the principles of fundamental civil and human rights for all people; a society which excludes and marginalises certain parts of the population is no guarantee for the development of democracy, but rather a serious threat to the European integration process, to social progress and to stability.

The views presented in the chapters reflect the opinions of the individual authors, and their own assessment of the particular social situation in that country. The opinions expressed therefore do not necessarily represent a general evaluation or the position of ILGA-Europe.

Extensive and regularly up-dated information on enlargement and the state of play of the accession process for each of the candidate countries can be found at the following web-sites of the European Commission and the European Parliament:  
[http://europa.eu.int/pol/enlarg/index\\_en.htm](http://europa.eu.int/pol/enlarg/index_en.htm)  
<http://europa.eu.int/comm/enlargement/index.htm>  
<http://www.europarl.eu.int/enlargement/>

### **The Executive Board of ILGA-Europe**

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<sup>3</sup> The printed version is still available in English. The French, Spanish, German and English versions can be downloaded from ILGA-Europe's web-site. For the Hungarian version see chapter 5.

## Chapter 1: **Bulgaria**

### Description of the legal situation

A number of important economic, political, social and legal changes have taken place in Bulgaria in the last 10 years. The transition to a market economy created new social relations, which influenced social stereotypes. Social attitudes towards various groups, such as disabled people, ethnic and sexual minorities are undergoing a slow change in the direction of tolerance, but they are still perceived as “different”. While some minorities enjoy improvements marked both in the legislation and social practice towards them, people of homo/bisexual orientation are neglected and ignored by society.

### Criminal law

The only provision concerning homosexual acts is found in Chapter II of the Penal Code “Crimes against the person”. In the section on “Debauchery”, Article 157 criminalises homosexual acts conducted by force or threat, as well as homosexual acts with minors or with people who do not understand the nature of the act.

The simple existence of Article 157 represents discrimination against lesbian and gay people by law. Paragraph 4 of this article (former paragraph (3) – SG, No. 89/1986), in the opinion of *Gemini*, needs to be eliminated:

A person who performs homosexual acts in public, or in a scandalous way, or in such a manner as to induce others along the road to perversion, shall be punished by deprivation of liberty for up to two years, or by corrective labour, as well as by public censure.

This provision contains ambiguous terms, which can be used against gay people in cases where there is a public display of homosexual feelings. No such offences exist for heterosexual behaviour.

In 1993, 40 people were investigated under Article 157; in 1994 there were 20 people investigated; in 1995, 29 people; in 1996, 32 people; in 1997, 21 people; and in 1998, 46 people. Two of these persons, in total, were women.<sup>1</sup>

Paragraph 5 of Article 157 reads:

A person who performs homosexual acts for the purpose of procuring for himself material benefit, or acts for this purpose as procurer with regard to another for such an act, as well as a person who, by giving or promising benefits, abets others to homosexual acts, shall be punished by deprivation of liberty for up to three years and by a fine of up to six levs...

This paragraph discriminates against gay people by criminalising gay prostitution whereas heterosexual prostitution is not prohibited under the law.

*Discrimination in the age of consent:*

For heterosexual sexual acts, the age of consent is 14, regardless of the age of the partner.<sup>2</sup> In contrast, for homosexual people, it is 16 if the partner is aged between 16 and 18,<sup>3</sup> or 18 if the partner is over 18.<sup>4</sup> The age of consent for homosexual relations between minors was lowered from 18 to 14 in 1986 and raised again to 16 in 1997 (Official Gazette 62/1997).<sup>5</sup>

### Anti-discrimination law

Bulgarian law lacks any anti-discrimination provisions with respect to discrimination based on sexual orientation.

Article 6 of the Constitution prohibits privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or so-

<sup>1</sup> Data provided by Boyko Boev, Bulgarian Helsinki Committee.

<sup>2</sup> Article 149, 151 CC.

<sup>3</sup> Article 157, paragraph 2.

<sup>4</sup> Article 157, paragraph 3.

<sup>5</sup> This differential treatment is not in conformity with the European Convention on Human Rights. In 1997 the European Commission on Human Rights in Strasbourg held, in the case of *Sutherland v United Kingdom*, that unequal ages of consent for homosexual and heterosexual sex created discrimination in the enjoyment of the right to privacy.

cial status or property status.<sup>6</sup> All social features on which discrimination is prohibited are explicitly set out in this Article. In other words, discrimination based on sexual orientation is permitted because sexual orientation is not among the social features enumerated.

The Labour Code does not include sexual orientation among the social features on the basis of which discrimination is prohibited in its Article 8. The most common discrimination which gay people encounter is being dismissed from work because of their homosexuality.

Those who have openly declared their homosexuality face the risk of career “freezing” or direct dismissal. In some cases, colleagues have a tolerant attitude to a gay co-worker, but it depends on the specific atmosphere at the workplace and tolerance is rarely the predominant attitude towards gays and lesbians.

In 1997-1999, a number of people informed *Gemini* that they had been dismissed because of their employers’ suspicion of their homosexuality. However, none were willing to ask for legal help because of fear that their homosexuality will become publicly visible. Besides, these cases are doomed to failure in the current legal context in Bulgaria, and because of the variety of additional reasons which might be given by the employer in the case of dismissing an employee. Nevertheless, *Gemini* is planning to initiate a proposal for changing the law for better protection of homosexuals’ rights.

## Family law

There is no prospect for a forthcoming change in family law in Bulgaria in the direction of the legal recognition of same-sex partnerships. Homosexual partners today are not able to legalise their relationships, to inherit each other’s property or to adopt children.<sup>7</sup> In most cases they have to hide their partnerships because of the predominantly negative social attitudes to such relationships.

There is no powerful legal lobby in the country which could initiate and facilitate a change in the law towards the legal recognition of homosexual partnerships.

*Artificial insemination* is available in some clinics in Bulgaria. However, it is usually accessible only by married heterosexual women. Ministry of Health Regulation 12 of 1987 sets out that women can be inseminated with sperm from their husbands or from a third person in cases where the husband’s sperm is not fertile.

## The social situation

Most problems which gay people in Bulgaria encounter are generated by the unfavourable social context which does not tolerate the public visibility of homosexuality.

## Public opinion

From 1944 to 1989 homosexuality was a taboo topic and lesbian and gay people became outsiders in the communist society. They were stigmatised as symbols of the “decaying capitalist society” and punished by the repressive government. Older generations still remember cases from the 1960s in which many intellectuals were prosecuted because of their homosexuality and subjected to corrective labour camps.

This means that homophobia has been ingrained very deeply into public consciousness. It is still a prevailing social attitude in Bulgaria, transferred from parents to children through their upbringing and education. *Gemini* recognises that changing homophobic stereotypes will require a lot of work and the results will probably come with future generations.

One impact of general social homophobia is that the majority of people in the gay and lesbian community do not want to reveal their sexual orientation under any circumstances. Consequently, they cannot be easily organised in defence of their rights. The media predominantly highlights those gay people whose behaviour reinforces negative stereotypes about gays and lesbians, such as sex workers and criminals.

Young people increasingly tolerate homosexuality and show a growing interest in gay and lesbian culture. However, their interest remains part of youth

<sup>6</sup> See further, Constitutional Court decision No.8 of 15 September 1994 concerning constitutional case 9/94.

<sup>7</sup> The law does not regulate or recognize either same-sex or heterosexual partnerships.

popular culture and is often considered as a kind of fashion that will be outgrown and forgotten in adult life.

*Gemini* believes that voicing positive opinions about homosexuality in the media and talking about homosexuality in schools and universities will gradually create a more tolerant attitude towards gay and lesbian people in mainstream culture.

### The media

The topic of homosexuality is often to be found in mainstream publications, as well as in the electronic media. However, the focus of the media is on the sensational, so that the media prefer to describe gay people as totally “different” and eccentric. There is no serious discussion of homosexuals’ problems in the media. The media has so far served to foster negative attitudes towards gays and lesbians.

### Church and religion

The majority religion in Bulgaria is Orthodox Christianity (about 70% of the population). The Orthodox Church is not so strong as in Romania or Russia, because it has its internal problems – a split into two Synods and power struggles. The Orthodox Church has not yet presented any official statement on homosexuality. It is also well known that some monks in Bulgarian monasteries have homosexual behaviour. Religious minorities in Bulgaria include Catholics, Protestants, Muslims and Jewish communities.

### Violence against gays and lesbians

There are cases of gay bashing. *Gemini* has been informed about attacks on gay people by “skin-heads”, especially after leaving gay discos at night. Due to a lack of co-operation from the police, no such cases have been legally investigated. The police are gradually changing their attitudes; however, individual police officers still do not agree to act as witnesses in cases of anti-gay violence. There have also been cases of police violence against gays but none of the affected were willing to testify when asked, because of fear of public censure.

### Health care

Gay people do not face any problems with respect to medical care until they are open about their homosexuality. HIV-positive people (no matter if they are gay or not) are the people subjected to the greatest discrimination by medical professionals. Common problems are refusal of medical assistance and breaches of the medical oath. The system of their treatment is still centralised – people from the provinces need to travel to Sofia to receive medical help and medicines, which creates conditions which reveal their illness. In the absence of any anti-discrimination provisions in Bulgarian law to protect these people, their rights are often violated without any legal consequences for the violators. About 80% of the HIV-positive population in Bulgaria have declared that they have contracted the virus via heterosexual contact, but public opinion still holds that the main reason for the dissemination of HIV in Bulgaria is gay sex.<sup>8</sup> At the time of writing, the official data about the number of HIV-positive people in Bulgaria by the Ministry of Health indicates 259 cases.

### The military

The Bulgarian army is undergoing changes at the moment to meet NATO’s accession requirements. Bulgarian military doctors still hold to the outdated belief that homosexuality is a kind of personality disorder, and gay men are considered unsuitable for military service. This provision is more than welcome by young gay men who would like to avoid compulsory military service. They are mostly afraid of the physical and psychological harassment that they might be subjected to in the army by homophobic military personnel. *Gemini* does not consider gay men as a “special” category, deserving “special” treatment. However, in a context of potential harassment *Gemini* would prefer to help gay people to avoid the army, since there are no legal provisions that will protect them against such harassment. *Gemini* has information about gay soldiers who have committed suicide, being unable to withstand the humiliation and harassment in the army.

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<sup>8</sup> Data provided to Gemini by Foundation “Plus and minus”- Varna.

## Good practice and recent developments

There is a developed commercial infrastructure of gay bars and discos in Sofia and Varna. Lesbians have so far been under-represented in that infrastructure. There are no women-only places or women-only nights at the gay bars. Many gay bar owners do not tolerate lesbians and *Gemini* can do little through negotiations because the owners set the entrance rules. *Gemini* believes that lesbian sub-culture needs financial and moral support from abroad so that lesbians could open up their own places where they could feel more at ease.

This paper is an attempt to provide an overview of the basic problems which gays and lesbians face in their daily life in Bulgaria. *Gemini* is planning to initiate negotiations with the Bulgarian Ministry of Justice, Ministry of Defence, Ministry of Labour and with all other governmental and non-governmental organisations interested to help with the improvement of gay communities in Bulgaria. Unfortunately, the success of these negotiations depends not only on our will for change, but also on a number of socio-economic changes which will affect the whole society. *Gemini* has always been open to partnerships and exchange of ideas, experience, and skills with foreign gay and lesbian organisations, which work in the sphere of gay and lesbian rights.

## Recommendations

*Gemini's* main recommendations for improving the situation for lesbian and gay people in Bulgaria are:

- in the short term, to eliminate Article 157, paragraphs 4 and 5 of the Penal Code;
- in the long term, to develop measures for the protection of lesbians and gays, and a broad educational program targeting the media, schools and universities, aimed at reducing prejudices about lesbians and gays, and fostering their acceptance in society.

**Guenko Guenkov**, *Gemini*

Input by **Boyko Boev**, legal consultant with the  
*Bulgarian Helsinki Committee*

## Chapter 2: Cyprus

### Description of the legal situation

#### Criminal law

It was May 1989. "HOMOSEXUAL ACCUSES CYPRUS BEFORE THE COUNCIL OF EUROPE FOR VIOLATION OF HIS HUMAN RIGHTS". Large capital letters appeared on the front cover of a Cypriot national magazine. Bold first page titles in all newspapers announced the same event. The articles clearly showed that many journalists were not only prejudiced but also knew very little about the subject.

The Criminal Code (CC) then considered consenting homosexual (as well as heterosexual) anal intercourse ("carnal knowledge against the order of nature") a criminal offence incurring up to five years imprisonment (Art. 171, 173 CC: "Unnatural Offences").<sup>1</sup> This ban on anal intercourse, reflecting the influence of the British colonial occupation of the island between 1878 and 1960, was incorporated into Cypriot legislation in 1929. In England and Wales, the respective law was amended by the Sexual Offences Act 1967, so that it no longer applied to consenting sexual acts between two men over 21 years of age in private, but this had no effect in Cyprus, which by then was an independent state. As a result, in Cyprus there was still in existence an outdated colonial law which had ceased to exist in the very same country from which it came.<sup>2</sup>

Consensual homosexuality between (mature) women has never been a criminal offence; lesbian sexuality is completely ignored by the law as if it did not exist at all.

On 6 December 1990, the European Commission of Human Rights of the Council of Europe decided unanimously, in the case of *Modinos v Cyprus*, that Cyprus was in violation of the European Convention on Human Rights because of the criminalisation of consenting adult male sexual relations. The case went to the European Court of Human Rights, as the government of Cyprus was reluctant to reform the law. The hearing was on 26 October 1992.

On 23 April 1993, the European Court of Human Rights decided that Cyprus was in violation of Article 8 of the Convention on the right to respect for private life.<sup>3</sup> The decision was by 8 votes to 1 – the Cypriot judge dissenting.

The Greek Orthodox Church bitterly opposed any reform of the law, and this was also the view of the majority of parliamentary deputies. However following considerable pressure from the Committee of Ministers (of the Council of Europe) over a five year period, the Parliament very reluctantly reformed the law in May 1998 (Criminal Code (Amendment) Law 40(I) 1998), a week before the third ultimatum given to the government expired.

The new law,<sup>4</sup> made to the satisfaction of the Orthodox Church and the majority of the parliamen-

<sup>1</sup> Art. 171: Unnatural Offences: "Any person who

(a) has carnal knowledge of any person against the order of nature; or

(b) permits a male person to have carnal knowledge of him against the order of nature is guilty of a felony and is liable to imprisonment for five years."

Art. 173: Attempts: "Any person who attempts to commit either of the offences specified in Article 171 is guilty of a felony and is liable to imprisonment for three years (...)"

<sup>2</sup> Scotland abolished the total ban in 1980 (Criminal Justice (Scotland) Act 1980, s. 80) and Northern Ireland in 1982 (Homosexual Offences (Northern Ireland) Order 1982).

<sup>3</sup> *Modinos v Cyprus*, Series A, No. 259.

<sup>4</sup> Art. 171: Unnatural Offences:

(1) Carnal knowledge between males against the order of nature which is carried out publicly or where one of the persons involved is under eighteen years of age, is considered to be a felony and is punishable with five years imprisonment.

(2) Carnal knowledge between males against the order of nature which is carried out either through the abuse of a relationship of dependency based on the rendering of services or by an adult through the seduction of a person under 18 years of age or for profit or as an occupation is considered to be a felony and is punishable by seven years imprisonment.

(3) For the purposes of this section the term "publicly" means between more than two persons or in the presence of a third person or third persons or in a place which is within public view or where on each occasion the public has a right of entry or a leave to enter with or without conditions.

Art. 173: Attempts: "(1) Any person who attempts to commit any of the offences specified in section 171 is guilty of a misdemeanour and is liable to three years imprisonment."

Art. 174A: Indecent behaviour etc. for carnal knowledge: "Indecent behaviour or soliciting or provocation or advertisement aiming at committing carnal knowledge between males constitutes an offence punishable by one year imprisonment."

tary deputies opposing reform, was regarded as unacceptable by Amnesty International, the human rights organisations of the island, practically all the Pan-Cyprian scientific organisations, including the Family Planning Association of Cyprus, the Gay Liberation Movement of Cyprus, and on 17 September 1998, the European Parliament<sup>5</sup>.

The amendments abolished the total ban on anal intercourse but introduced new discriminatory provisions for gay men. While consensual heterosexual anal intercourse in private was completely decriminalised if both partners are over the age of 13 years (Art. 174 CC), homosexual anal intercourse was only decriminalised between partners over the age of 18 years. Homosexual anal intercourse remained a felony,

- a. when more than two persons took part or were present (Art. 171 (1) & (3) CC) or
- b. when one of the partners was under the age of 18 years (Art. 171 (1) CC) or
- c. when it took place for profit or as an occupation (Art. 171 (2) CC) or
- d. when it was carried out either through the abuse of a relationship of dependency based on the rendering of services (Art. 171 (2) CC).

Furthermore a provision was introduced outlawing indecent behaviour or soliciting or provocation or advertisement aiming at committing anal intercourse (“carnal knowledge”) between males (Art. 174A CC).<sup>6</sup> No corresponding provisions existed for heterosexual relations.<sup>7</sup>

Finally, in September 1999, the Committee of Ministers of the Council of Europe found the law unacceptable and Cyprus was obliged to reform the law again, which the Parliament did in June 2000 (Criminal Code (Amendment) Act (No. 3) 2000, Law 77(I) of 2000).

The amendments<sup>8</sup> changed the wording of the law from “carnal knowledge” (between males) to “intercourse” (between males). The ban on consensual homosexual anal intercourse when two or more persons are present has been abolished and Art. 174A restricted to indecent behaviour, soliciting, provocation or advertisement (aiming at committing anal intercourse) towards legal minors. The other inequalities referred to in b. to d. above still remain on the books.<sup>9</sup>

<sup>5</sup> Urgency Resolution B4-0824 and 0852/98.

<sup>6</sup> Art. 164 (1) (b) CC generally makes it an offence to solicit and importune for “immoral purposes” but only if the soliciting or importuning is “persistently” undertaken in “a public place”.

<sup>7</sup> There are also inequalities when it comes to sexual acts in public. Art. 171 (3) makes it a criminal offence if homosexual anal intercourse occurs in a place to which the public is entitled or permitted to have access to with or without conditions. Sexual acts other than homosexual anal intercourse are an offence only if committed in a place where the public is entitled or permitted to have access to without any condition or upon condition of payment, thus leaving such acts committed in places accessible by the public upon other conditions than payment unpunished (if they do not fall under Art. 176, see below) (Art. 4 & 177 CC). Art. 171 (3) also renders homosexual intercourse a criminal offence when it is committed in a place visible to the public. Other sexual acts (other than homosexual anal intercourse) not committed in a public place are an offence only if they are likely to be seen by someone in a public place thereby leaving unpunished such acts in private places visible to the public, but not likely to be seen, and those in private places likely to be seen only by persons in a(nother) private place (Art. 4, 176 CC). Moreover “public” sexual acts in the sense of Art. 171 (3) are punishable by imprisonment of up to five years, while “public” sexual acts in the sense of Art. 177 and 176 are punishable by a fine up to 300 pounds or imprisonment up to two years (Art. 177), or a fine up to 100 pounds or imprisonment up to three months (Art. 176).

<sup>8</sup> Art. 171: Intercourse between males:

“(1) Intercourse between male persons in public or in any other place when one of the parties is below 18 years of age shall be regarded as a criminal offence and shall be punishable by five years’ imprisonment.

(2) Intercourse between male persons involving either abuse of a position of dependence based on service of any kind or committed by an adult by the seduction of a person below 18 years of age or for profit or as a professional activity shall be regarded as a criminal offence and shall be punishable by seven years’ imprisonment.

(3) For the purpose of this article, “in public” shall mean in a place visible to the public or to which the public is entitled or permitted to have access with or without conditions.”

Art. 173: Attempted Offences:

“(1) Any person who attempts to commit any of the offences defined in Article 171 shall be guilty of a felony and shall be liable to three years’ imprisonment.”

Art. 174A: Indecent behaviour etc. for carnal knowledge: “Indecent behaviour or incitement or provocation or advertising to a legal minor with a view to the commission of intercourse between male persons shall be a criminal offence and shall be punishable by one year of imprisonment.”

## The social situation

The first public discussion on homosexuality was organised by the Pan-Cyprian Mental Health Association in the autumn of 1979. In the spring of 1982, a two-day seminar was organised by the same association on the same theme. Around 500 persons attended, the great majority being women.

As a result, two gay men got together and five years later and with great efforts and many difficulties, 16 gay men and a lesbian founded, on 10 December 1987, the *Gay Liberation Movement of Cyprus*. Until now, less than six persons have come out of the closet – all other gay and lesbian members of the Movement being still in the closet.

From 1989 onwards, with great caution, two private radio stations had interviews with a gay man who, on air, answered questions from listeners. Homosexuality was also included in regular weekly radio programmes on human sexuality. Later, homosexuality was more openly discussed on all private radio and TV stations.

Cypriot society is small and everyone practically knows everyone else, and homosexuality is considered a great social stigma. The slightest suspicion of homosexuality is enough to make a person an outcast. Homosexuals suffer anxiety, discrimination and unhappiness with the result that they are forced to conceal their sexual orientation.

No scientific research or study of any kind has ever been done on homosexuality in Cyprus. The information used for this report is based on data gathered from the persons who have attended the weekly meetings of the Gay Liberation Movement and their experiences.

## Younger persons and homosexuality

Cyprus is a Mediterranean island with strong influences from the Middle East. Men and women have distinct and separate roles in life. Legally, women are equal to men, but they are not in daily life. Cypriot society appears to be “exclusively heterosexual” and marriage is the accepted norm. Children with

homosexual orientation grow up with heterosexual identities, wanting to get married and have children, like everyone else. The homosexual reality is completely hidden from them. Homosexual role models are unseen and the homosexual way of life unknown – the only knowledge is that the subject is extremely negative.

For many men, the same-sex experiences that they may have during adolescence and even afterwards when doing their military service, can be justified as being because of the absence of the opposite sex. Many have to become young men before they realise that they are homosexually inclined. When this happens they are terrified of being rejected by their parents, family, friends, colleagues and of the social stigma. They feel ashamed, they become terribly unhappy and extremely lonely. Very few will seek help from parents and specialists. When they get settled in their jobs and grow a little older, with the increasing pressure from their families, they get married as they are programmed to from childhood and start a family. In several more years, the great majority will lead a double life. After all, Cyprus is a sunny island with temperate climate and long, beautiful beaches. Over 2.5 million tourists are visiting the island all year round.

## Homosexual life-styles

Life in the villages is extremely difficult, but distances between the main towns are short. Many gay men declare that they can enjoy sex with straight men only. The question that arises is, how straight can such a “straight man” be? – unless of course he is bisexual. It is also possible that they mean “not an effeminate man”. Anyway, who can truly say who is really gay or straight in a society where hardly anybody admits to homosexual inclinations? It is known that even exclusively heterosexual men can enjoy same-sex relationships, given the right persons and the right time. This is not an uncommon practice in the Middle East and other Mediterranean countries, where women are not yet free to associate with men. Problems arise in particular for “passive” men because, it is believed, they betray the role of a man, as they descend to the lower stages, those of a woman.

<sup>9</sup> Also the inequalities mentioned in note 8 above are still on the books. In addition, it should be noted that Art. 189 (e) CC, while being neutral in its wording, regularly and disproportionately is used against gay men: Art. 189 CC: Rogues and Vagabonds: “(e) every person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose shall be deemed to be a rogue and vagabond and is guilty of a misdemeanour, and is liable for the first offence to imprisonment for three months, and for every subsequent offence to imprisonment for one year”.

Owing to the fact that Cyprus, until very recently did not have its own university, a large number of young Cypriots study abroad. Away from home, they are free to join gay groups, become gay activists, take part in gay pride parades and thoroughly enjoy a very active gay life – a way of life forbidden to them at home. After finishing their studies, a number settle down abroad.

Of those who return to Cyprus, the great majority will get married, have children and lead a double life. Good cinema and theatrical productions, recitals and concerts as well as ballet performances from visiting companies, attract gay men. Often they socialise with other gay friends for television and coffee, sometimes for dinner and most of the time without their family or friends knowing, or even suspecting, they are gay.

### Partnerships

Many of the adult gay men and women who remain single desire and seek a permanent relationship. Such relationships are easier to be achieved, in this society, between women than between men, and are more numerous. Cypriot men are brought up to be strong and conceal their emotions, and find it difficult to be tender and loving towards another man. The Gay Liberation Movement and specialists trained abroad, enlightened with the latest knowledge concerning sexuality, have assisted many gay persons who seek advice, with the result that we now have over thirty male couples who have been living together for between 6 and 10 years in the main towns. Very few of these couples have talked this over with their family. For the great majority, there is an unspoken understanding and silent acceptance – a practice terribly common amongst those who have a gay or lesbian child in their family.

### Lesbian experiences

Lesbians are being discriminated against on both counts as women and as lesbians, and, practically, often get married and have children. In the past, many were active members of feminist organisations or women's groups, and could meet other lesbians without revealing their sexual orientation, but these groups have slowly disappeared. Some lesbian couples in the main towns live together for

several years – this gives them a good cover, for families, friends and colleagues.

The younger generation of lesbians refuse to get married or to socialise with young men as a cover, particularly if they are economically independent. They usually live on their own, not with their families, and they socialise with small groups of 5-6 other lesbians of the same age. Many of those who form a permanent relationship, alter their way of life and only meet other lesbians occasionally.

The lesbians who are still single meet often and socialise with gay young men who share the same interests. The necessity to socialise with the opposite sex brought many homosexual men and women together – thanks to the Gay Liberation Movement which helped to disperse the myths and stop prejudices that existed even between them.

Artificial insemination is possible only for married women.

### Public opinion

Generally speaking, there is a lot of oppression in all walks of life. Gays are still widely seen as criminals and against the order of nature, offenders in the eyes of the law. They are regarded as bodily and mentally perverted, immoral, child molesters and sinners with the deadliest sins of in the eyes of the Orthodox Church. Many lesbians and gays are rejected by their families, there is no relevant sex education whatsoever, and no assistance from any group. Lesbians and gays are socially stigmatised, and made outcasts in their own country. They are discriminated against in employment, stamped as “psychopathic personalities – passive homosexuals”, and thrown out of the army. The oppressive attitudes are so dominant that no visible lesbian and gay community is yet able to exist. These prevent many members of the Gay Liberation Movement from coming out of the closet.

### Church and religion

The Orthodox Church<sup>10</sup> is powerful and considers homosexual relationships among many other things, “the gravest of sins”.

<sup>10</sup> The 1960 Census by the Statistics Department of the Republic of Cyprus found 77% of the population belonging to the Greek Orthodox denomination.

## Violence against gays and lesbians

Beaches, parks and “cottages” in the main towns can be dangerous places. Many people, especially during the summer months, find themselves in trouble in these places with plain-clothes young policemen, who are often “agents provocateurs”. On many occasions, gay men fall victim to assault and theft by hooligans and blackmailers – because they are afraid to complain to the police, those perpetrating the crimes remain unpunished. At the beginning of 2000, a 41 year old English tourist was battered to death with his head crushed by a large stone by two 18 year old youths. This occurred in Limassol while he was walking on the mall, at a short distance from a pub. The two killers, who a short time before had a drink with him, returned to the same bar with blood-stained shirts and shoes. When they were finally picked up by the police, the next day, they confessed to the crime and that they had stolen thirty pounds from the victim.

## Military service

Homosexual men are not accepted in the army if their orientation is discovered. However, with the exception of a small number, the male members of the Gay Liberation Movement have completed their military service and excelled in all posts they held.

## Health and HIV/AIDS

Treatment for people living with HIV/AIDS is free in Cyprus and available through hospitals. The Government also provides a monthly subsidy with no discrimination. If HIV positivity is discovered, non residents are deported.

Sex education is not a practice in schools, nor is information and debate about same-sex issues.

## Recent developments

There are no organised gay bars or clubs on the island. However, several places in the main towns, usually owned by gay persons, are known as meeting places with mixed clientele. The *hammams* (Turkish baths) used to be the meeting places of the older generations, but nowadays gyms are in fashion for young and old alike, men and women, but especially men.

Apart from occasional parties at Christmas and special occasions, where about 50 gay men and some

lesbians gather, there have been few gay private parties, where about 350 in total (mostly men) gathered together. The first one was in December 1990 to celebrate the unanimous decision of the European Commission of Human Rights. The second took place in April 1993 to celebrate the European Court of Human Rights’ decision, and since then, two more to raise money for people with HIV/AIDS.

Practically all gay men have holidays abroad, even if they can hardly afford it. Greece is a very popular place; the gay bars of Athens and the saunas, the gay beaches of Myconos and other Aegean islands come first. Amsterdam, Paris, London and other European cities are always places for those who can afford them.

Cyprus is a divided country, proud to be a member of the Council of Europe and trying hard to become a member of the European Union. To achieve this, a first and necessary step is the equality of all citizens in the eyes of the law. This is a minimum demand. What must be achieved is true equality in the minds of all people in every day life. To achieve this we still have a very long way to go.

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Legal information reviewed and amended by  
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## Chapter 3: **The Czech Republic**

### Introduction

Although Czech society can be considered fairly tolerant towards sexual minorities, the wide spectrum of pressing issues for the lesbian, bisexual and gay communities can be narrowed down mainly to registered partnership, and the problem of coming-out in a country largely misinformed about such issues. For example, the call for registered partnership has been interpreted by some politicians and citizens as asking for privileges over heterosexual citizens. Other issues such as same-sex parenting, employment discrimination and violence against homosexuals are largely ignored. Only two political figures – a senator and a foreign affairs civil servant – are openly gay/bisexual.

It should be noted that the current social democratic government is somewhat more sensitive to the needs of the homosexual community than previous governments. The government publishes an annual report on human rights in the Czech Republic and includes a section on the homosexual community, however it restricts itself to a short descriptive paragraph dealing solely with the subject of registered partnership. An advice centre focusing on human rights – the Human Rights Council of the Government of the Czech Republic (HRC) – was created in 1999. The homosexual community has two honorary representatives on the boards of two sections of the HRC, the Section for Equal Rights of Men and Women (Marie S. Lienau) and the Section for Civil and Political Rights (Jiří Hromada from the Association of Organisations of Homosexual Citizens, SOHO).

It is widely known that President Václav Havel openly supports equal rights for the homosexual community. Also, the annual May Rainbow festival in Karlovy Vary took place in 2000 under the aegis of the Minister of Culture, Pavel Dostál (affiliated with the Social Democratic Party, ČSSD). This has also been repeatedly supported by the local mayor. Unfortunately, as President Havel is serving his final term, amidst a political climate that can only be described as volatile, the elections in 2002 hold an uncertain future for Czech lesbians and gays.

### Description of the legal situation

#### Criminal law

The Czech Republic decriminalised homosexuality as early as 1961, repealing Article 241 s. 1 of Act 86/1950 of the Penal Code: “an offence of an intercourse with a same-sex person”.

The remaining Article 244 of s. 140/1961 Coll. of the Penal Code nevertheless created a higher age of consent for homosexuals, and penalised: 1) adult homosexuals over 18 meeting with those under 18, regardless of mutual consent; 2) abuse of dependency; 3) accepting financial reward for homosexual behaviour; and 4) public offence. The lack of specificity in the crime of creating a “public offence” allowed it to be widely misused against gay people, who suffered undue abuse from the authorities. Article 244 was repealed in July 1990, bringing the country a step closer to a truly democratic system.

#### Anti-discrimination law

Legislation introducing a general anti-discrimination clause into Czech law was passed in March 2000. The Parliament also amended the Labour Code and included in it a provision penalising discrimination on the grounds of “sexual orientation” amongst other grounds listed. The new provision came into effect on 1 January 2001.

#### Family law

##### Partnership law

The first attempt for registered partnership occurred in 1995 when the government considered whether or not to present its own proposal on same-sex partnerships to Parliament. The national gay and lesbian organisation, SOHO, had been lobbying for this initiative for a long time and helped draft the bill. It is important to note that the registered partnership bill did *not* include any reference to fostering or adoption rights for lesbians and gays. However, ultimately the government decided not to present the bill to Parliament.

Three years later in April 1998, Parliament rejected a new bill initiated by some of its members. The defeat at the first reading was by a mere three votes. In December 1998, a group of parliamentary deputies from across the political spectrum (Jitka Kupcová, a Social Democrat; Monika Horáková, Union of Freedom; Zuzka Rujbrová, a communist; Jan Zahradil, a Civic Democrat) drafted a new version of the partnership bill, again with the assistance of SOHO, entitled the “Act on the Partnership of Same-Sex Persons”. It provoked adamant opposition from only one political party, the Christian Democrats, who have spoken repeatedly against the bill and at every opportunity have voted unanimously in opposition to the bill. In pursuit of this initiative, the deputies sponsoring the bill, along with SOHO, organised a seminar on it in February 1999 for the benefit of Parliament. They explained in detail the reasons for the bill and answered questions from deputies which often revealed surprising ignorance of the plight of gays and lesbians and a lack of understanding of the implications of the draft law. In March 1999, the government voted almost unanimously in favour of the bill.

The Parliament then voted on whether or not to consider the bill. During the lengthy discussion, a Christian Democrat member, Mr Tollner, referred to homosexuality as “obscene” and “filthy practices”.<sup>1</sup> However, a proposal to reject the bill was defeated, and the bill was passed to the Constitutional and Legal Committee and to the Petitions Committee for Human Rights and Nationalities. The Constitutional and Legal Committee then amended the bill, while the Petition Committee passed a resolution recommending that Parliament accept the bill.

The second parliamentary reading session of the bill was in June 1999. The Christian Democrats twice proposed the rejection of the bill but were defeated on both attempts in the Lower House. However, before the Constitutional and Legal Committee was able to familiarise deputies with the new amendments, the Lower House passed a surprising vote that returned the bill for redrafting. The two Committees reconvened and the Petitions Committee reiterated its resolution calling for the Parliament to accept the bill, whilst the Constitutional and Legal Committee specified further amendments.

In October 1999, the Parliament reviewed the Committees’ opinions at second reading, but Cyril Svoboda,

a Christian Democrat from KDU-ČSL, motioned for a vote rejecting the bill, or at the very least having it returned to the Committees for redrafting. The Parliament did not accept this fourth proposed rejection of the bill, but once again returned it to the Committees for redrafting, without even having heard the new amendments.

At the beginning of the December 1999 session Cyril Svoboda – for the fifth time – proposed that the Lower House reject the bill, and this proposal was passed by 91 to 69 votes.

Some deputies deemed the registered partnership bill unnecessary since gay people have other legal instruments at hand to solve housing and other issues on an individual basis. Many deputies expressed concern that the bill was poorly prepared, and others were afraid that registered partnership would be a forerunner of fostering and adoption rights for homosexuals.

In May 2000, the Human Rights Council officially urged the government to draft its own registered partnership bill. The Government was due to tackle the issue again in autumn 2000 and empowered Justice Minister Otakar Motejl to draft a new bill.

### Adoption law

There is no legislation covering the terrain of gay and lesbian parenting. In fact, this issue is often only raised as a misrepresentation by those in the Parliament opposed to the registered partnership bill. The current political climate is generally not in favour of adoption or fostering by homosexuals. Although in December 1999, Cyril Svoboda admitted publicly that he is well aware of gay and lesbian couples raising children in this country, he went on to claim that “having a child before you build a same-sex relationship is one thing; I guess there is nothing we can do about that. But building a same-sex relationship first and then wanting a child is not acceptable ...”.

SOHO has chosen not to tackle publicly the issue of homosexual parenting in order to avoid generating any unnecessary negative reactions which could prove harmful to the registered partnership bill. A lesbian action group, Výzva 2002, criticises this position of inaction and has called for a non-biased, non-ideological professional and public debate on

<sup>1</sup> Czech Press Agency 2.4.1999; Lidove noviny 8.4.1999.

same-sex parenting, founded on the available research and facts. The group also demands equal rights for existing same-sex couples with children.

In the past decade there has been at least one official court ruling that has granted shared fostering rights to homosexual parents. In 1995, the Prague district court granted fostering rights – albeit only after thorough and lengthy psychological tests – to a divorced lesbian mother I. L., with full knowledge that she lives with her partner L. J., and that the two women would be raising the male child together. The downside of this decision, however, is that the non-biological mother has of course no legal ties to the child and vice versa.

### Health care

The existing questionnaire for potential blood donors poses a biased question about the donor's sexual orientation and places homosexuals among high risk groups.

### Immigration and asylum law

The status of bi-national couples is very complicated after the new Aliens Act, which has been effective since January 2000. This dramatically tightened the requirements for foreigners seeking to reside in the Czech Republic, e. g. by requiring foreigners to have health insurance paid for the entire length of their stay in the country. In addition, there is a fear among certain politicians (surprisingly, even the Union of Freedoms chair Karel Kühnl) and the public that the registered partnership law or any related directive pertaining to immigration rights for homosexuals would enable opportunistic foreigners to migrate to the Czech Republic under false pretences. These politicians have conveniently chosen to ignore the fact that homosexuals still fear isolation, resentment, and ill-treatment, making any public declaration of homosexuality for the purposes of irregular immigration rather unlikely.

There are no reported cases where an asylum applicant has stated persecution on the basis of homosexuality as the foundation for application. According to the Ministry of the Interior, one transsexual

applicant has been rejected. His argument was based on the fact that his home country had postponed the gender reassignment surgery, but this was not accepted as a sufficient basis for refugee status.

## The social situation

### Public opinion

Homophobia among various professional circles (teachers, doctors, police) remains a significant problem. Jarka Talandová, a sociologist student at Charles University, quoted her research on attitudes towards homosexuality among secondary school and university teachers,<sup>2</sup> which reveals a surprising lack of familiarity with the terms “heterosexual” (28% of respondents confused this word with “bisexual”) and “homosexual” (defining a gay man as “a person who has sex for money”). 21% believed that homosexuality is not genetically predetermined, but “can be learnt”.

On two occasions, the (alleged) homosexual orientation of a hopeful politician standing for local government or Senate has been placed on public billboards, clearly in an attempt to damage the candidate's reputation. A STEM opinion poll from early 1999, reveals that two Czechs out of three “do not mind homosexuals in politics, but 70% believe that admitting to homosexual orientation could damage a politician in the eyes of the public.”<sup>3</sup>

Although the Czech homosexual community still does not enjoy equal rights, there are indications that the majority of the population is becoming increasingly understanding of the inequalities facing gays and lesbians. The recent opinion polls carried out by STEM in March 2000 reveals that 51% do not approve of homosexual relationships. According to STEM, tolerance of homosexuality has grown from 29% in 1995 to 48% in 1999.

As for the acceptance of registered partnership, STEM's 2000 poll suggests that 42% are in favour of the law (compared to 35% the previous year). However, research carried out by IVVM seems to indicate a rise in negative responses; 42% said no as opposed to 38% who said they support the law.<sup>4</sup>

<sup>2</sup> Jarka Talandova (1997) ‘Socialni postaveni lesbických žen v České republice a alternativni rodníne modely v kontextu heterosexuality společnosti (The Social Status of Lesbians in the Czech Republic and Alternative Family Models Within the Context of a Heterosexual Society)’, FF UK, Social Work Department.

<sup>3</sup> Opinion polls in 1999, 4.9. by STEM.

<sup>4</sup> IVVM press release for the Prague Post on 27.4. 1999; Pravo 3 March, p.3 - IVVM, STEM opinion poll.

Finally, the raising of a child by a homosexual couple is viewed, according to research by STEM from February 1999, as acceptable by less than a third of the polled respondents – these were 680 young people and university graduates. In contrast, 30% believe that a homosexual couple is a family.

### The media

The media tend to be understanding and report on gay and lesbian issues in a generally positive and unbiased way. Interestingly, a wave of direct criticism arose in the media after the Parliament rejected the registered partnership bill for the third time. Deputy Tollner's offensive remarks on homosexuals were so widely criticised that in April 1999 the leadership of his party, the Christian Democrats (KDU-ČSL) was urged to disagree publicly with his statements and issued a formal apology. KDU-ČSL's Youth Group demanded that Tollner forfeit his mandate in the Parliament, but he refused to accede to this demand.

A number of national and regional newspapers and magazines refuse to accept paid personal advertisements from lesbians and gays.

### The military

There have been no official incidents of gay men being forced out of the military due to their sexual orientation, however, given the latent climate of homophobia in the military it is very likely that a publicly gay man would have a difficult time advancing his military career. Attitudes towards serving in the military vary in the gay community. Anecdotal evidence suggests that a considerable number of gay men would hesitate to reveal their sexual orientation while serving in the military for fear of abuse and discrimination. For this reason, many gay men feel they should be exempted from serving the mandatory term. While the issue of gays serving in the military has not generated any significant public debate it is widely felt in the gay community that homophobia exists in the military to a much more severe degree than it does in the general public.

A recent amendment to the Labour Code on discrimination in the workplace would theoretically cover any homophobic activity in the military and the Human Rights Chief Inspector at the Ministry of Defence, Mr Vladimír Tetur, has voiced his readiness to help combat homophobia in the army, admitting a hostile atmosphere existed.

### Gay and lesbian organisations

There is one national umbrella group in the Czech Republic called SOHO (Association of Organisations of Homosexual Citizens) which consists of approximately thirty member organisations represented in the majority of urban centres. There are a few mixed gay/lesbian groups but the majority of member groups are exclusively gay; there are only three lesbian groups involved with SOHO. Three or four SOHO member groups are student-organised. Unfortunately, women do not play an active role in SOHO as feminism/gender, transgender and transsexual issues are not addressed sufficiently, if at all, in the political discourse of the association. There is one lesbian group, *Výzva 2002*, and one transgender group, *Transform*, who work together outside of SOHO to deal with the aforementioned issues. There is one monthly publication, *Gayčko*.

There is a weekly gay and lesbian radio programme called *Bona Dea* on National Radio 3.

There are three main gay and lesbian cultural festivals which receive national media attention each year. The Rainbow Festival in Karlovy Vary is an annual event featuring gay and lesbian films, discussion groups, and a small-scale parade. The April Festival is a women's event focusing on lesbian, gender and feminist issues. The one day *Gay Men* event is the culmination of a beauty contest exclusively for men. There are several regular gay and lesbian poetry readings; an annual gay/lesbian film festival and an annual Czech and Slovak gathering which takes place each autumn addressing gay/lesbian issues in the two countries. The Karlovy Vary International Film Festival featured a section devoted to transgender issue films.

With the ascendancy of the Social Democrats in 1998 the relationship between NGOs in general and government has improved. Despite limited progress, legislative restrictions remain which make it difficult for NGOs to operate with any real financial independence. There is no unified voice representing the interest of NGOs, making communication with government difficult and often fruitless. SOHO has been very successful in raising money for its AIDS prevention programme and consequently benefited from an increase in funding. However, in line with a general tightening of government spending, funding to SOHO has decreased recently.

Nonetheless, the government is attempting to make legislation compatible with EU standards and there is a seeming willingness to comply (even “over-comply” at times) with EU directives. The amendment to the Labour Code to forbid sexual orientation discrimination was heavily inspired by similar developments in European Union law. The EU representative to the Czech Republic, Ramiro Cybrian, has been very helpful to various gay/lesbian groups in need of information.

**Further literature:**

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A. Brzek, J. Pondělíčková-Maslová: *Třetí pohlaví* (The Third Gender), Scientia Medica 1992.

**Miluš Kotišová**

## Chapter 4: **Estonia**

### **Description of the legal situation**

#### **Criminal law**

From the beginning of the 18<sup>th</sup> century until 1991, except for the period 1918-1940, Estonia was part of Russia and its laws were in force here. The Penal Code of 1845 prohibited “pederasty” in its Article 1293. In 1866, this article became Article 995 but was not changed in its content. Pederasty was punishable with the loss of civil rights, exile to Siberia and corporal punishment; pederasty with minors was punished with forced labour of up to 12 years. Pederasty was defined as “sodomy” (anal intercourse between men).<sup>1</sup> In practice, things were less simple since, for instance, some eminent members of high society and the cultural elite were notorious homosexuals. Lesbians were never mentioned in law.

At the beginning of the 20<sup>th</sup> century the censorship of publications dealing with sexuality was abolished, especially after the revolution of 1905. During the post-revolutionary period, a considerable amount of information was published about St. Petersburg’s homosexual saunas, cafés, etc.<sup>2</sup> On March 22, 1903 the Imperial Council adopted a new Penal Code, in which Article 516 provided for a punishment of not less than 3 months imprisonment for anal intercourse between men. However, this section, as well as most other sections, of the code was never actually enacted in Russia.<sup>3</sup> It was, however, enacted in Estonia during German occupation in 1918.<sup>4</sup>

Soon after World War I, Estonia gained its independence. In the first years of the Republic, the laws

on homosexual acts were repealed. According to the revised legislation, homosexuality was a penal offence only in case of violence or when the partner was a minor. Naturally this change in the legislation was not an expression of sympathy on the part of the people in power towards homosexuals, but rather a result of the wish to be regarded as a democratic country.<sup>5</sup>

In 1917, Imperial Russia went through a communist revolution and was renamed Union of Soviet Socialist Republics. During the first years of the Soviet Union, homosexuality was not forbidden. There was a growth in totalitarianism during the 1930s, and on 7 March 1934 a law was decreed which made consenting “sexual acts between males” (see footnote 9) punishable. It was a national law which required the various republics of the Soviet Union to adopt it into their internal laws. The prescribed punishment was noticeably harsher than in the draft version of the law from 17 December 1933: instead of the maximum penalty of five years in prison foreseen in the earlier law, the new provision, which became known as Article 121, prescribed a minimum penalty of three years.<sup>6</sup>

In 1940 Estonia was invaded by Russia and the Penal Code of the Republic was immediately invalidated and replaced by that of the USSR. Homosexual relationships (anal intercourse, see footnote 9) between males were once again punishable. From 1960, punishment for homosexual acts was returned to the level of the original draft law of December 1933<sup>7</sup>: a maximum penalty of five years imprisonment.<sup>8</sup> However, the laws and provisions varied in different Soviet Republics and Estonia seems to have had the mildest adaptation of the USSR Penal Code Article 121.

<sup>1</sup> Teet Veispak (1991): “Homosexuality in Estonia in the 20th century: ideological and juridical aspects” in: Parikas Udo & Veispak Teet: *Sexual minorities and society: the changing attitudes toward homosexuality in the 20<sup>th</sup> century Europe*, Papers on the history of sexuality, No. 1, Tallinn: Institute of History, p. 105; and Helmut Graupner (1997) *Sexualität, Jugendschutz und Menschenrechte*, Frankfurt/Main et al.: Peter Lang, Vol. 2, p. 448.

<sup>2</sup> Veispak.

<sup>3</sup> Siegfried Tornow (1991): “Homosexuality and politics in Soviet Russia” in: Parikas & Veispak, p. 82.

<sup>4</sup> Helmut Graupner (1997).

<sup>5</sup> Veispak (1991), p. 108.

<sup>6</sup> Tornow, p. 87.

<sup>7</sup> Tornow, p. 90.

<sup>8</sup> Masha Gessen (1994): *The rights of lesbians and gay men in the Russian Federation*, An International Gay and Lesbian Human Rights Commission report, s. 1, p. 9.

Article 118 of the Estonian Soviet Socialist Republic Penal Code:

- 1) For sodomy<sup>9</sup> – confinement of up to 2 years;
- 2) For sodomy using violence or threat, or taking advantage of a victim's helpless situation, or consciously with a person under eighteen years of age – confinement from 2 to 6 years with or without deportation of up to 3 years.

Sexual crimes provided a relatively small share of the total number of crimes registered (2-3%). Within the category of sexual crimes, sodomy accounted for 4-5% of cases.<sup>10</sup>

**Table 1: Criminal convictions for sodomy, 1960-1989<sup>11</sup>**

After 1989, no-one was convicted because of his homosexuality, although Estonia did not regain its independence until August 1991 and consensual sexual acts between men were only decriminalised as of 1 June 1992. The Penal Code of the Republic of Estonia is actually an amended version of the Soviet model of the Criminal Code, still using pejorative phraseology.

Article 118 of the Republic of Estonia Penal Code now provides:

- 1) For sodomy using violence or threat, or taking advantage of a victim's helpless situation – confinement from 2 to 5 years;
- 2) For sodomy consciously with a person under sixteen years of age – confinement from 2 to 10 years.

Article 118 remains the only anti-gay article in the criminal law, as it provides for a higher age of consent for gay relations (16 years) than for heterosexual vaginal intercourse (14 years).<sup>12</sup> However, the punishment provided in Article 118(1) for homosexuals is the same as for heterosexual rape.<sup>13</sup> Actually, there is now no need for separate articles about rape for gays and heterosexuals.

### Anti-discrimination law

Half a century spent under a totalitarian regime had its effect on Estonians. People are generally not well-informed of their rights and violations of human rights are seldom recognised as such. Estonia has a very weak record of anti-discrimination provisions in general, and none at all against sexual orientation discrimination.

<sup>9</sup> The Russian term is “muzhelozhstvo” – defined as “satisfaction of sexual desire contrary to nature between two men in the form of anal contact”. See A.Ya. Sukhareva and V. E. Krutskikh Bolshoi (eds) (2000): *Yuridicheskii Slovar* [Great Legal Dictionary], 2<sup>nd</sup> ed., Moscow: Infra-M. Editor's note: This was the case for the Russian Soviet Republic and most of the other Soviet Republics including Estonia. In the Byelorussian and the Lithuanian Soviet Republics, however, “muzhelozhstvo” was interpreted as also covering oral sexual contacts between men (see also chapter on Lithuania).

<sup>10</sup> Veispak, p. 111. Source: The Archive of the Ministry of Justice of the Estonian Republic. Statistics about the rates of punishment and the composition of the crime for the years 1960-1989.

<sup>11</sup> The statistics given do not differentiate between those acts of sodomy committed with violence, and those without. Moreover, we cannot find the total number of those convicted, e. g. if there was another article of the code included in the composition of the crime, treason for instance, for which the law provides a higher rate of punishment, then only this higher offence is recorded in the statistics; *ibid.*, p. 112.

<sup>12</sup> Minimum age limits exist for vaginal intercourse and homosexual anal intercourse only.

<sup>13</sup> Article 115 (1): Sexual intercourse with an adult female using violence or threat, or taking advantage of victim's helpless situation – confinement from 2 to 5 years.

Article 12 of the Constitution provides:

Everyone is equal before the law.

No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds.

The incitement of national, racial, religious or political hatred, violence or discrimination shall, by law, be prohibited and punishable.

The incitement of hatred, violence or discrimination between social strata shall, by law, also be prohibited and punishable.

Sexual orientation is not specified in the list. However, Article 13 states that “everyone has the right to the protection of the state and of the law”.

There is no jurisprudence concerning the dismissal of a person because of his/her homosexual orientation. Employers avoid giving sexual orientation as the motive for dismissing an employee and it is very difficult to prove a discriminatory intent.

After the Council of Ministers of the European Union agreed to a directive on equal treatment in employment and occupation in 2000 (see chapter 14), it is expected that national legislation forbidding discrimination on the grounds of religion or belief, disability, age and sexual orientation in all aspects of employment and occupation will be introduced in Estonia.

## Family law

### *Partnership law*

There is no legal recognition of same-sex partnerships. Article 1(1) of the new Family Law, which came to force on 1 January 1995, states that: “marriage is contracted between a man and a woman”. The Marriage and Family Code of the Estonian Soviet Socialist Republic did not specify this.

No municipality provides the option of a symbolic registration of same-sex couples.

In a newspaper interview in 1993, the then Minister of the Interior, Lagle Parek, said she was willing to legalise gay partnerships.

When the Parliamentary Assembly of the Council of Europe adopted its Recommendation 1474 in support of lesbian and gay rights on 26 September 2000, Anti Liiv, an Estonian delegate to the Assembly, declared on his return to Tallinn that Estonia had to legalise marriage between two men or two women.<sup>14</sup>

### *Adoption law*

Same-sex couples cannot adopt children as a couple. A lesbian or a gay man could adopt a child as an individual, but in practice this would probably be possible only if the homosexuality of this person was not revealed.

In two reported cases, divorcing partners have used the fact that the ex-wife was lesbian as a weapon in the fight for exclusive custody/parental rights over the couple’s children. First, in a 1993 divorce case in Tallinn, a man sought custody of his two children on the grounds that his ex-wife was a lesbian and lived with her female partner. The lawyer objected, indicating that the law does not mention lesbians and therefore provided no justification for refusing the woman custody of her children. The mother retained custody of the children and is raising them with her female companion.<sup>15</sup>

In 1994, in a similar divorce case in a county court, a man sought custody of his three children, also claiming that his ex-wife was having a lesbian relationship. Fearing local scandal and a negative decision in a higher court, the female partner denied being in lesbian relationship with the mother and the divorcing couple agreed later upon dividing their children as follows: the ex-husband having custody of the son and the ex-wife has custody of the two daughters.

### *Artificial insemination*

Single women are not excluded from assisted artificial insemination, but obviously lesbians try not

<sup>14</sup> Anti Liiv: Eesti seadustab lähima kümne aasta jooksul homoabielud. ETA 02.10.2000.

<sup>15</sup> Lilian Kotter (1995): “Estonia” in Rachel Rosenbloom (ed.): *Unspoken Rules. Sexual Orientation and Women’s Human Rights*, San Francisco: International Gay and Lesbian Human Rights Commission, p. 56. See also: Lilian Kotter (1997): “Estonia” in Kate Griffin & Lisa A. Mulholland (eds.): *Lesbian Motherhood in Europe*, London: Cassell, pp. 99-103.

to expose their sexual orientation. Artificial insemination is not forbidden for lesbians.

### Immigration and asylum law

There have been no known cases of gays and lesbians seeking asylum in Estonia on the grounds of persecution because of their homosexuality.

### Social situation

Magnus Hirschfeld in his famous book "The Homosexuality of Men and Women"<sup>16</sup> notes: "one aristocrat from the Baltic Provinces writes to me, 'In the aristocratic families of Livonia and Kurland, there are a great many genuine homosexuals (I would estimate the number to be at least 10 percent), virile ones almost without exception. In Estonia, the percentage seems to lower, but perhaps this has to do with the other provinces coming into less contact with Estonia, and therefore, the homosexuals there are not known'. Nevertheless, there are no records or any other evidence about the existence of saunas or clubs for homosexuals from that period. Naturally, certain favourite meeting places had developed, like streets and cafés, but nothing more. The reason for this was simple: Estonian society was relatively small (one million); Tallinn had a population of only 150,000. Most of the population was of rural origin, and attitudes towards homosexual love were generally negative.

It was not completely repressive during the 50 years of the Soviet regime. Many gays recall the 1960s as "golden years" compared to the years before and after. From the end of 1960s, the Soviet Union stepped back into a neo-Stalinist era; the number of prosecutions of political dissidents as well as homosexuals increased.<sup>17</sup> Soviet expert Jerry Hough remarked in the mid-1970s that articles on homosexuality in the Soviet media seemed to be a greater taboo to Soviet authorities than those criticising the basis of the Soviet social, political, or economic system.<sup>18</sup>

During the late 1980s, as a consequence of *glasnost*, unprecedented liberalisation took place in the Soviet Union. Silence around sexuality, including ho-

mosexuality, was broken with relevant articles in newspapers and magazines, as well as on radio talk-shows.

Since then, the media has been generally tolerant and neutral, sometimes even friendly and supportive towards sexual minorities. From 1989, the first gay and lesbian classified advertisements were published by independent newspapers.

In May 1990, a scientific conference was held in Tallinn on the theme "Sexual minorities and society: the changing attitudes toward homosexuality in the 20<sup>th</sup> century Europe". This was the first conference of its kind in the Soviet Union. It caused a breakthrough in public opinion as well as in self-consciousness among gays and lesbians. The conference received wide and positive press coverage.

### Public opinion

There is no political party in Estonia which openly opposes gays and lesbians and their human rights, although there are a few politicians who hold personal opinions which tend to be homophobic or chauvinistic. Some right-wing parties in fact express very liberal views, whilst some politicians who claim to be from the left are quite conservative.

Public opinion has changed; there is greater tolerance and acceptance of alternative life-styles in general. Hate speech is rare in the media. Violence against gays and lesbians is also uncommon, although unreported cases of "queer bashing" do occur. There is no information on the abuse of gays and lesbians by the police. On the contrary, the police have provided professional assistance in arranging some gay and lesbian public events.

In 1989, the first attempt was made in Estonia to find out the prevailing attitudes towards sexual minorities. The survey was based on 180 questionnaires submitted to college students at the two largest higher education establishments in Tallinn – the Tallinn Pedagogical University and the Tallinn Technical University. The average age of respondents was 22. 46% of the respondents regarded homosexuality as a form of disease, whereas 35%

<sup>16</sup> Magnus Hirschfeld (2000) *The Homosexuality of Men and Women. Part II: Homosexuality as Sociological Occurrence*, Tr. Prometheus Books at p. 612.

<sup>17</sup> Ibid., p. 113.

<sup>18</sup> Raelynn J. Hillhouse (1990) 'Communist politics and sexual dissidents' aspects' in Parikas and Veispak, at p. 74.

disagreed with this. About half considered homosexuality an unnatural form of sexuality, yet a third found it normal. 10% of the students supported, while 74% opposed the idea of isolating male homosexuals from society, the corresponding figures for lesbians were 7% and 83%. About 22% thought that homosexuals should be subjected to medical treatment; two-thirds disagreed. 60% of female respondents agreed that both gays and lesbians should be considered normal people deserving no more attention than heterosexuals. Of the male respondents, roughly half agreed with this for gays; this rose to 62% in relation to lesbians.

An amazingly large proportion of students, 50%, supported legal same-sex marriage; 28% objected. Female students were slightly more permissive than male students and the same could be said of students of sciences when compared with students of humanities. Lesbians were generally better tolerated.<sup>19</sup>

## Education

Homosexuality is still not dealt with adequately in education and is not presented as an equal alternative to the heterosexual life-style. The reason for this is basically that sexuality is not itself included in the curriculum. The majority of teachers are middle-aged or older and were educated in Soviet schools and universities. Nevertheless young gays and lesbians – at least in the capital city and the second biggest city Tartu – seem to be much more visible than the older generation was in its youth.

Gay and lesbian studies is still a marginal subject at Estonian universities. Research is being done into the various aspects of homosexuality. Several students are interested in studies concerning homosexuality or sexual minorities. The main problem for them is lack of adequate professors and literature. Volunteers from lesbian and gay groups have provided advice to sex education teachers as well as supplying volunteers who then visit schools to provide information on homosexuality.

## The military

There is compulsory military service for all male citizens. Providing a “civil” service option is in progress. No cases of harassment of gays in the army are reported, but this may be the result of gay and lesbian individuals hiding their sexuality.

## Transgender people

Post-operative transsexuals can change their name and their official sex in documents like passports and identity cards. They can marry and adopt children. Popular attitudes toward post-operative transsexuals are generally liberal.

Health insurance does not cover the costs of gender reassignment surgery. Only pre- and post-surgery treatment is subsidised. As a result, a number of transsexuals have sought better opportunities outside Estonia. In 1994, a transgender group *Gendy* was formed to support and counsel people from the transgender community. For a long time, it was the only group of its kind in Eastern Europe.

## Gay and lesbian organisations

During the same period, Estonian lesbians and gays started to organise themselves. In October 1990, the Estonian Lesbian Union (*Eesti Lesbiliit*) was formed as the first sexual minorities’ group in the Baltics. This was a networking group with nearly 200 informal members by 1994. The Estonian Gay League (*Eesti Gayliit*) was founded in February 1992. The outright names of both groups carried a message: lesbians and gay men in Estonia are not afraid or ashamed of being who they are. This was a great contribution to the visibility and general acceptance of sexual minorities.

The gay and lesbian movement in Estonia did not encounter any obstacles from public authorities. However, both the aforementioned groups, as well as the Leathermen’s group<sup>20</sup>, the transgender group, *Gendy*, and the Tartu gay group, *Apollo*,<sup>21</sup> have had

<sup>19</sup> Ivika Nõgel (1991) “How homosexuality is regarded among students in current Estonia” in Parikas and Veispak, at p. 117-121.

<sup>20</sup> *Eesti Nahkmeeste Selts*; founded in 1993.

<sup>21</sup> Founded in 1997.

to depend almost totally on their own fundraising. External funding only developed in 1995 when the ILGA anti-discrimination project (funded under the EU PHARE Democracy Programme) was carried out including the Estonian Lesbian Union and the Estonian Gay League as partners.

There is a growing gay and lesbian community and scene in Tallinn and Tartu. Since 1998, there have been permanent gay night clubs and a gay bar in Tallinn. From time to time, new gay bars emerge and vanish because of financial difficulties. Special gay and lesbian events like summer camps are arranged.

Two national organisations, the Estonian Gay League and the Estonian Association for Lesbians and Bisexual Women (*Eesti Lesbide ja Binaiste Ühing*),<sup>22</sup> assume the role of representing homosexuals in Estonia. Members of lesbian and gay organisations contribute to homosexual visibility as they are often invited to appear on TV and radio.

The lesbian movement in Estonia has been visible since its very beginning. No regular co-operation with other NGOs is observed as the scene is quite limited. Unlike many lesbian groups in other countries, Estonian lesbians do not liaise with the feminist movement, mainly because this is very weak in Estonia.

The gay and lesbian press is underdeveloped, with only some irregular and non-commercial publications. The longest surviving and the most regular was a lesbian information letter with nearly 50 issues during 1994-1999. The lack of publications is compensated by gay and lesbian internet sites. In 1998-1999 there was a weekly radio talk-show at a local station, Nõmme Raadio, which discussed sexual minorities' issues.

**Lilian Kotter,**  
*Estonian Association for  
Lesbian and Bisexual Women*

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<sup>22</sup> A group replacing the Estonian Lesbian Union since 1998.

## Chapter 5: Hungary

### Description of the legal situation

#### Criminal law

Homosexuality was decriminalised in Hungary in 1961<sup>1</sup>. Before that, both male and female homosexual acts had been banned and punished. Since then, partners who are both of age can have same-sex relationships. (In 1961, legal majority was obtained at the age of 20 years, this was reduced to 18 in 1963.) The age of consent, however, has remained different for homosexual and heterosexual relationships: 18 and 14 years respectively.

Article 199 of the Hungarian Penal Code says that the age of consent in homosexual relationships is 18 years, and a relationship of someone who is older than 18 with someone who is younger than that is punishable by up to three years in prison. Each year, there are several legal cases relying on Article 199. (Two women or two men, though, who are both younger than 18, can have a lawful sexual relationship.)

Currently, there are three petitions on Article 199 addressed to the Constitutional Court, which endlessly postpones reaching a final decision. The first was written in September 1993 by gay organisations<sup>2</sup>, a personal petition was submitted in March 1996<sup>3</sup>, and the last one was sent to the Court by a judge in a Budapest district<sup>4</sup>. In September 1998 this judge refused to deliver judgement, arguing that Article 199 contradicts the Constitution.

#### Anti-discrimination law

The Hungarian Constitution contains an anti-discrimination clause (70/A. § (1)):

The Hungarian Republic ensures for all persons who are resident on its territory human

and civil rights without any discrimination, namely discrimination based on race, colour, gender, language, religious, political or other opinion, ethnic or social origin, financial status, birth or other situation.

This clause does not mention sexual orientation, but a precedent was set when the Constitutional Court suggested that homosexuality is included in the phrase “other situation”. This occurred when it ruled in March 1995 that the then existing partnership law was unconstitutional, and in 1996 the Parliament was compelled to change the partnership law so that it included same-sex couples.<sup>5</sup>

In 1998 Háttér “Support” Society for Gays and Lesbians in Hungary wrote to the Minister of Justice, referring to the resolution of the European Parliament of 17 September 1998 which listed Hungary among those countries which are applicants to the European Union but still possess discriminatory criminal laws.<sup>6</sup> The Minister, however, did not give a clear answer and evaded the issue of the age of consent law.

However, it is not only the difference in the age of consent which is discriminatory in Article 199, but also the very expression it uses: a sexual relationship between same-sex partners is referred to as an “unnatural perversity” in the law. Indeed, it labels as perversity all sexual acts that are not heterosexual intercourse.

The Penal Code contains an article that punishes hate speech (Article 169), but it does not mention homosexuality. It lists national, ethnic, racial and religious minorities, and “specific population groups”. Homosexuality could be included in this phrase, but Article 169 is, in any case, seldom applied at all. It is relatively new, entering the Penal Code in 1996. Hate speech had not previously been

<sup>1</sup> 1961. V. Law, § 279. Part b however states that sexual intercourse between same-sex partners who are older than 20 is still punishable if it “rouses indignation in others”.

<sup>2</sup> Petition addressed to the Constitutional Court by Lambda Budapest Gay Society, Homeros Society, and the Hungarian Jewish Lesbian and Gay Group, against Article 199 of the Penal Code, 13 September 1993.

<sup>3</sup> Petition to the Constitutional Court Regarding Sexual Crimes, Géza Juhász, 19 March 1996.

<sup>4</sup> 1.BII.82009/98, Budapest, II-III. District Jury.

<sup>5</sup> 1996. XLII. Law, Civil Code, § 578/G and § 685/A.

<sup>6</sup> Resolution “On Equal Rights for Gays and Lesbians in the EC”, 17 September 1998; B4-2824 & 0852/98, PE 272.005/79.

regulated because of concern for the freedom of expression, which was a central issue after the one-party system had been abolished. However, it has become increasingly necessary.

Judges and those who work in higher government offices have to fill in a questionnaire in which they are asked about their sexual life and factors that may make them vulnerable to blackmail, including homosexuality. The questionnaire is used, but it cannot be known what would happen if a judge confirmed her or his homosexuality.

## Family law

### *Partnership law*

The Constitutional Court legalised lesbian and gay partnerships on 8 March 1995. The Court said that the previous law limiting partnerships to “those formed between adult men and women” was unconstitutional, and ordered the Parliament to make the changes necessary to recognise same-sex partnerships by 1 March 1996. Ironically, this ruling of the Constitutional Court was not the result of legal action initiated by lesbian and gay organisations or individuals, and there was no lobbying prior to the decision. 1995 and 1996 were the years when the first organisations that later began to write political petitions were formed. Groups started to lobby for the passage of the law only after the ruling of the Constitutional Court.

The partnership law includes any couple that lives together permanently in a state of “financial and emotional communion”. It is a factual legal relationship, which comes into existence without official registration; thus it has underlying problems of proof.

Whenever a partner applies for a benefit to which she or he is entitled because of being in such a relationship (e. g. pension, inheritance), she or he has to apply to the social department of the local government or to the regional retirement institution.

Each request is considered separately. In each case, the social workers of the local social department must make an enquiry to confirm that the couple actually live or lived together, which may mean interviewing neighbours. However, the proportion of closeted people is so high in Hungary that lesbian and gay organisations only know about contracts written before a notary (regulating inheritance), and have no knowledge of cases where the partnership law has been invoked by a lesbian or gay couple.

### *Adoption law*

A public debate about adoption started in the last two years. The situation is quite paradoxical, since the issue was first raised in those countries with a very visible lesbian and gay community, whilst in Hungary, where the vast majority of gays and lesbians live a secretive life, it has been raised by the media. Until such time as one feels secure enough to live an openly lesbian or gay life, one seldom feels the urge to adopt. The question thus does not yet reflect the real wishes of many people. However, it brings out homophobia and it is an opportunity for passionate debates.

According to the present rules, only heterosexual married couples can adopt a child together, and a child adopted by a single person can only be adopted later by the spouse of the parent: her/his partner – regardless of her/his sex – cannot.<sup>7</sup> At a conference about adoption by foreign citizens held on 9-10 September 1999, the question of adoption by lesbian and gay parents provoked a heated debate. Some of the participants stated that they had confronted cases in which they suspected that the person wishing to adopt was homosexual. A vast majority of experts opposed adoption by same-sex partners.<sup>8</sup>

### *Artificial insemination*

Artificial insemination, according to the health law of 1997, is only possible for married or unmarried heterosexual couples.<sup>9</sup>

<sup>7</sup> Family Rights Law, § 47.

<sup>8</sup> Interview with László Mocsonaki, chair of the Háttér Society for Gays and Lesbians in Hungary, who is himself a social worker dealing with the protection of children. After the conference, its organizer was reported by one of the participants, because she invited gay experts to participate.

<sup>9</sup> CLIV. article 167. para.1.

## The social situation

### Public opinion

Although the social opportunities for gays and lesbians have been increasing during recent years, and the media also deals more with sexual minority issues, the visibility of gays and lesbians in the public sphere is still very limited. What characterises the public and most gays and lesbians as well is a reluctance to regard this question as a political issue.

Politicians neglect lesbian and gay issues completely. In November 1999, the president of the Hungarian Socialist Party claimed in an interview that there is no discrimination against gay people in Hungary.<sup>10</sup> The basis of this statement is characteristic of Hungarian politicians: if gay people are willing to be secretive, then they can have a job (especially if they are intellectuals living in the capital), and of course nobody wants to talk about their sexuality... The present government is trying to create a complete silence about this topic, and denies funding for gay and lesbian organising. The state media have been headed by right wing members of the main governing party. In November 1999, the biggest newspaper in Hungary, *Népszabadság*, published an article written by a man working for a government institution, who not only described homosexuality as a deviance, but defined it as a pathology alongside with depression, alcoholism and drug abuse; the genetic connection between these “aberrations” being “proven”.<sup>11</sup>

Lesbians and gays who live in this forced silence tend to identify with these opinions and images, and live a secretive life. Only very few want to take part in organisations. Other NGOs have little support as well, because of historical reasons – mainly the apolitical nature of the average Hungarian citizen following decades of disenfranchisement. However, in the case of lesbian and gay organisations, the stigma attached to sexual minorities is another factor that adds to this general attitude, which is very difficult to change. The present conservative gov-

ernment appears to be attempting to halt the changes that have been made during recent years.

According to research conducted in 1995, the majority of respondents listed homosexuals as the second least-preferred group (homosexuals are less preferred than skinheads). 95% would not allow her/his child to befriend a homosexual and only 2% would allow a homosexual into her/his apartment.<sup>12</sup> Hopefully, the situation has somewhat improved since then, as more people have come to know homosexuals in their environment – a lot of gays and lesbians have come out in recent years. But the vast majority of people still are not aware of any in their environment and prejudices develop in this context.

### The military

In Hungary there is compulsory military service for all male citizens. Homosexuality is not a reason to be exempted from serving in the army unless a medical certificate is obtained from a psychologist which states that serving in the army would cause serious psychological problems for the person. However, while gay conscripts are welcome for the compulsory service, high-ranking officers say that there are no gays in the army – which means that openly gay people have no chance of embarking on a professional career in the army. Both the Ministry of Defence and the Ministry of Health list homosexuality among “personality disorders”.<sup>13</sup>

### Education

In Hungary, sex education is quite accidental. If sex educators are invited to a school, they talk about heterosexual relationships and reproduction. Teachers get reference books which contain questions that they are advised to bring up in classes. If these contain topics referring to homosexuality, they are generally homophobic (and they do not even mention the existence of bisexual or transgender people). Many of them list homosexuality among “deviancies” like “prostitution and drug abuse”. Some, which are deemed to be “liberal” by their authors, “only” ask whether students agree with homosexuals coming out.

<sup>10</sup> Interview with László Kovács, president of the Hungarian Socialist Party, by László Seres, in *Élet és irodalom* (“Life and Literature”), November 1999. <sup>10</sup> Interview with László Kovács, president of the Hungarian Socialist Party, by László Seres, in *Élet és irodalom* (“Life and Literature”), November 1999.

<sup>11</sup> Ákos Tárkányi (1999) *Családi élet: az értelmezés medrei* (“Family life: Streams of Interpretation”), *Népszabadság*.

<sup>12</sup> Zoltán Fábián (1999) *Tekintélyelvűség és előítéletek* (“Respect of authority and prejudices”), Új Mandátum, Budapest.

<sup>13</sup> 7/1996. (30. VII.), common measure of MD and MH, Appendix II.

Sometimes, gay and lesbian professionals or activists receive invitations from people they know to take part in activities, especially in colleges and universities or in the context of professional training. In recent years, members of the Háttér Society and the Labrisz Lesbian Association have taken part in training activities for social workers and in workshops organised by university or college students.

The Labrisz Lesbian Association has launched a project funded as a micro-project under the PHARE Democracy Programme, which is the first project trying to organise links between lesbians and gays on one side and secondary school teachers and students on the other. The greatest difficulty lies in persuading teachers that this is a significant topic for themselves and their students, while parents and other teachers will probably be opposing the invitation of gay people to schools. Labrisz has recently undertaken to discuss this with college teachers who teach gender-related issues. This will be followed by three public debates and the production of flyers containing information for high school students and teachers.

## Health

One of the main problems facing gay men in particular is HIV. Although 84% of those who are known to be HIV-positive are gay, projects and programmes funded by the Health Ministry have not mentioned this fact until very recently. Posters made for prevention campaigns and conferences only represented and mentioned heterosexuals. The National AIDS Committee (which is a committee directly under the Health Ministry) began to fund HIV-prevention projects for gay and bisexual men only two years ago. However, these projects cannot be very public; following a decision by an ad hoc advertisement ethics committee, posters designed by a gay organisation could not be placed in public places, as the very name of the organisation was "dangerous for young people". The Háttér Society also runs an HIV-prevention project, but in 1999 it was not allowed to organise discussions about being gay at the most popular forum for young people: the summer Student Island. In 2000, it was allowed to share a tent with the National AIDS Committee.

As for people living with HIV/AIDS, one of the biggest difficulties is that they cannot build an effi-

cient forum to make themselves heard. There is only one hospital in Hungary that has a ward which cares for all HIV-positive people in the country. Its doctors are members of the National AIDS Committee which distributes funding to groups that represent HIV-positive people, so it is very difficult to criticise them, even if they make arbitrary decisions. The Habeas Corpus Working Party, which runs a legal help-line, had a case in which one of these doctors arbitrarily changed the medication of a patient, whose condition began to deteriorate quickly, but the doctor was not willing to reconsider his decision, and even humiliated the patient. It was only after HCWP called the attention of the director of the hospital to this case that the doctor was asked to give explanations, and in the end the patient managed to get back to his previous medication.<sup>14</sup>

## Gay and lesbian organisations

The first Hungarian gay organisation, *Homeros Lambda*, was officially registered in 1988, after two years of efforts, as the communist regime was coming to its end. As its founding document states, its main aim was to prevent the spread of HIV in the gay community, and it subordinated its other aim, the organisation of events and the creation of gay meeting places, to this purpose. This was probably the only way that it could be registered at that time.

Before *Homeros*, only informal meeting places existed in Budapest: circles of friends and cruising areas. During the mid-1980s, a group of people began to realise the importance of creating gay groups. *Homeros* also had a few active lesbians, but their role and number was much less than those of gay men. However, only very few members of this organisation came out publicly, and most of them only later, through other organisations. It was *Homeros*, though, that established links with Western gay and lesbian groups, especially ILGA, with which it organised meetings during its first years of operation, such as, in November 1987, the first ILGA Eastern European conference, a "clandestine" two-day meeting in Budapest that gathered around 35 participants from Hungary, Poland, GDR, CSSR, Yugoslavia and some Western countries.

It was mainly the members of *Homeros* who began to set up other more open and more active organisations in the beginning of the 1990s, when

<sup>14</sup> Interview with Géza Juhász, chair of *Habeas Corpus Munkacsoport*.

the political climate had been through many changes and a number of NGOs were formed.

A group called *Lambda Budapest* was founded in 1991; it has been publishing the monthly gay magazine *Mások* since 1992. The beginning of the 1990s also saw a rise in social and self-help groups like *Keshergay*, a Jewish gay group, and *Vándor Mások*, a gay hiking group. A meeting and discussion group was set up by students at the Eötvös Loránd University; it existed during 1992 and 1993. The self-help groups still exist and there is also a Catholic gay circle, as well as a new discussion group for young gays and lesbians.

The *Szivárvány* (Rainbow) Association for the Rights of Gays was the first organisation that set its task in political terms. This organisation, however, has not been officially registered since its creation in 1994. The Supreme Court denied it registration, giving two reasons: first, it argued that the use of the word “meleg”<sup>15</sup> could “mislead” people, especially the young, who were not aware of its “gay” meaning. Second, the Court noted that the organisation did not set an age limit for its membership. The Constitutional Court also found that courts have the right to limit by age the membership of lesbian and gay rights groups. According to the Supreme Court, in claiming conditions that allow gays and lesbians to live openly in society, those advocacy groups may incite “unnatural sodomy” (Article 199 of the Penal Code). The Constitutional Court went further by stating that young people would put at risk “the full development of their personality” and that this risk would not be in proportion to the benefits conferred by their membership.<sup>16</sup> The case was finally transmitted to the European Court of Human Rights in Strasbourg. However, on 12 May 2000 the Human Rights Court rejected the application as manifestly ill-founded and therefore inadmissible.<sup>17</sup>

In the meantime, other organisations that complied with the age limit of 18 and used the word “homosexual” in their names were set up. (Later, mostly because of the unprecedented public attention sur-

rounding the *Szivárvány* case in newspapers and on TV, the word “meleg” became well-known, and organisations like *Háttér* and *Lambda Budapest* were able to use it.)

The *Háttér* Society for Gays and Lesbians in Hungary was founded in 1995. Its initial project was to set up a telephone help-line which has been operational since 1996. The helpline has remained its main focus, as it can reach people outside the capital, where many gays, lesbians and bisexuals have no other possibility to communicate with others, ask questions or receive psychological help. With its 50 members, *Háttér* has initiated several other projects during the last four years. It organises training with professionals for its new volunteers; runs a nation-wide HIV and AIDS prevention project (funded by the National AIDS Committee); holds lectures and training sessions for social workers; has an archive which is used by students and researchers; and it has been the main organiser of the summer Gay and Lesbian Film and Cultural Festivals and Pride Marches for three years, as well as the Positive Festival in December. Recently, it broadened its activities to include legal work; it gives legal advice and provides lawyers to those who need them. It has also published a report on the legal situation of sexual minorities in Hungary, which complements the Hungarian translation, also by *Háttér*, of the report that ILGA-Europe published in 1999, “After Amsterdam: Sexual Orientation and the European Union”.<sup>18</sup>

The Habeas Corpus Working Party was formed in 1996 by those members of the Rainbow Association who refused to define themselves in terms of a finite and central identity. It is a small organisation that deals with public matters and aims to defend rights, having mostly young intellectuals as members. The group organises public debates about freedom of personal life and sexual equality; they also write petitions to the Constitutional Court and prepare recommendations for legal reforms in order to defend sexual self-determination. In addition, they lobby politicians about these issues, and maintain a legal help service mostly for those who are discrimi-

<sup>15</sup> Until then, lesbian and gay organisations had used the word “homosexual”. The word “meleg” only began to be used in the 1990’s; it means “warm” and is not derogatory.

<sup>16</sup> 21/1996. (17.V.) Constitutional Court decision.

<sup>17</sup> Application 35419/97, *Szivárvány, Juhász and Palfy v Hungary*.

<sup>18</sup> ILGA-Europe, László Mocsonaki and Bea Sándor (2000): *Amszterdam után: A szexuális orientáció az Európai Unióban és Magyarországon* (“After Amsterdam: Sexual Orientation in the European Union and in Hungary”), Budapest.

nated against because they belong to a sexual minority. They have a telephone help-line and ensure free lawyers for those who need them.

The *Labrisz* Lesbian Association was created at the beginning of 1999, but was registered only at the end of that year. It is the first Hungarian lesbian organisation ever to exist. Many of its members have been and are members of *Háttér*, but in a heterosexist and sexist society lesbian and bisexual women have many more difficulties with coming out and voicing their views, so the focus of lesbian organising is necessarily different from that of a mainly gay group. *Labrisz* organises a monthly discussion group, and has published a book on lesbianism, feminism, the history of lesbians and their movement. Moreover, it has begun working on an education project and is working on both creating and taking a portion of the public space for lesbians.

## Conclusions

Apart from legal discrimination, it is silencing that works most strongly against sexual minorities in Hungary. The fact that civil institutions are underdeveloped and underfunded, the false arguments that sexuality belongs to the private sphere and that if somebody does not talk about it, she or he will not be subject to discrimination or that there is no discrimination against sexual minorities in Hungary, and the reluctance of politicians to deal with these issues are all impediments that the few active organisations have to face. Moreover, they maintain the lack of recognition of civil and human rights and NGOs both by authorities and the average citizens that imply and enforce silencing. This maintains the low visibility of gay, lesbian and bisexual individuals and organisations. It also hinders research and the documentation of case studies which could be used for highlighting cases of discrimination as well as stimulating judicial reform.

Typical examples of silencing can be seen in the funding of specific projects. Hungarian funding bodies generally tend to deny support to projects that would increase the visibility of gays and lesbians in the country. The *Labrisz* Lesbian Association, although it got funding for its education project from the PHARE Democracy Programme of the European Union (funds are distributed by a Hungarian foundation), was warned several times that their volunteers should only go to secondary schools (typically for students over 14 years), and it did not

get funding for making a brochure for primary school students (under 14 years) and their teachers. This Hungarian foundation did not give any explanation for its decision, but it is clearly the outcome of a fear of homophobic remarks from conservative MPs or government authorities. The annual gay and lesbian festival is not supported by Hungarian funding bodies either, although already the 5<sup>th</sup> festival took place in 2000.

The main objectives of Hungarian gay and lesbian NGOs are:

- to persuade authorities to define gays and lesbians as a minority group, and thus to ensure funding for their projects (social services, publications, festivals, etc.);
- to enhance their visibility;
- to create education projects for students, teachers, policemen and the armed forces;
- to have a government agency that would consult gay and lesbian NGOs about laws and international inquiries;
- to change the Penal Code in a way to grant equal rights to people in heterosexual and homosexual relationships.

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## Chapter 6: **Latvia**

### Description of the legal situation

#### Criminal law

The 1999 Latvian Criminal Law is not clear regarding the age of consent. Theoretically there are two interpretations. According to the first, Article 161 covers both heterosexual and homosexual acts and consequently the age of consent is 16 for heterosexual and homosexual acts. Article 161, "Sexual acts with a person who has not reached the age of 16", provides for imprisonment of up to 4 years for "sexual acts with a person who has not reached the age of 16, where the latter is in material or other dependence on the person committing the sexual act, or where such act is committed by a person who has reached the age of 18".

According to the second interpretation, based upon academic literature, the term "sexual act" in Article 161 covers only vaginal intercourse between man and woman.<sup>1</sup> The age of consent for all other sexual acts can be identified with the help of Article 160, titled "Violent sexual gratification". Article 160.1 punishes with imprisonment for up to 6 years sexual acts of "pederasty or lesbianism or other forms of unnatural sexual gratification, if such acts are committed with violence, or threats or taking advantage of a person's helpless state". According to the Supreme Court<sup>2</sup> the fact of a person being a minor, defined in law as a person younger than 14, is considered to be a state of helplessness.<sup>3</sup> Therefore 14 is the minimum legal age for consenting lesbian and gay sex as well as non-vaginal acts between man and woman. In any case the age of consent for lesbians and gay men is not higher than for heterosexuals. A further Article of the Criminal Law, Article 162 – "Enticement to depravity", does not distinguish between homosexuals and heterosexuals.

Accordingly it punishes the committing of a "depraved act" with a person not of full age (between 14 and 18) against the will of that person or by a person over 18 (162.1) or the committing of a depraved act with a minor under 14 (162.2). Depravity is understood as all possible sexual activities excluding those covered under Articles 160 and 161.<sup>4</sup>

#### Anti-discrimination law

##### *Constitutional provision*

Theoretically Article 91 of the Constitution provides protection to lesbians and gay men. This article states that "all people in Latvia are equal before the law and the courts. Human rights shall be exercised without any discrimination". The Parliamentary Legal Office has confirmed that Article 91 guarantees *inter alia* protection on grounds of sexual orientation.

However, in practice, usage of the Constitution's protection is almost impossible. Firstly, the law "On the Constitutional Court"<sup>5</sup> does not provide the right to petition for individuals and NGOs. Secondly, only the Constitutional Court – and not an ordinary court – has the right to consider a question whether a particular law or any other legislative document complies with the Constitution.

The first anti-discrimination case occurred in August 1997 when Gatis Bugoveckis was dismissed from Bauska city police after revealing his homosexuality. Following his dismissal he submitted a complaint to the Latvian National Human Rights Office.<sup>6</sup> In April 1998 the Office delivered the opinion that it regarded Gatis' dismissal as discrimination because of his sexual orientation and as contrary to Latvian law and international human rights

<sup>1</sup> M. Blūma, G. Bušuļevs: "Latvijas PSR kriminālkodeksa komentāri", Rīga, "Liesma", 1965, p. 265; J. Dzenītis, A. Niedre: "Latvijas PRS kriminālkodeksa komentāri", Rīga, "Avots", 1982, p. 411; V. Liholaja: "Noziedzīgi nodarījumi pret personu", Latvijas Universitātes Krimināltiesisko zinātņu katedra, Rīga, 1998, p. 93; V. Liholaja: "Krimināllikuma komentāri. 4. grāmata. Sevišķā daļa", Rīga, 1999, "Firma AFS", p. 110.

<sup>2</sup> Decision No. 6: "On Court practice in the application of laws which define criminal responsibility for sexual offences" of 19 October 1992.

<sup>3</sup> Article 11 of the Criminal Law.

<sup>4</sup> V. Liholaja: "Noziedzīgi nodarījumi pret personu", Latvijas Universitātes Krimināltiesisko zinātņu katedra, Rīga, 1998, p. 94.

<sup>5</sup> Law of 5 June 1996.

<sup>6</sup> The Office was established as "an independent State institution promoting observance of the fundamental rights and freedoms of individuals in the Republic of Latvia in accordance with the Constitution, international human rights treaties which are binding for Latvia". The Office has a right to investigate complaints, but its power is limited to formulating of "opinions and proposals in the form of recommendations", Law of 5 December 1995 "On the National Human Rights Office".

norms. Although not legally binding, this opinion is the first case when a state institution acknowledged a violation of human rights on the grounds of sexual orientation.

### *Criminal Law*

Additional anti-discrimination provisions are included in the Criminal Law: any discrimination on the basis of race or ethnic origin is a criminal offence.<sup>7</sup> Similarly, unequal treatment based on a person's religious beliefs is punishable.<sup>8</sup> However, three proposals to include prohibition of discrimination on the grounds of sexual orientation in these provisions<sup>9</sup> were rejected by the Parliamentary Commission on Human Rights and Public Affairs.

### *Labour Law*

The Code of Labour Laws guarantees equality in employment on the grounds of various characteristics, but these do not include sexual orientation. Therefore employers are free to refuse employment to homosexuals, or dismiss employees because of their homosexuality. Criminal Law contains a provision penalising the "limitation or violation of rules on employment by employer".<sup>10</sup> However, lesbians and gay men who are victims of discrimination cannot rely on this, since labour law itself does not outlaw discrimination on the basis of sexuality and such discrimination is therefore not unlawful.

Recently prepared by the Ministry of Justice – and currently being considered by Parliament – is a new draft Labour Law which contains an anti-discrimination provision including sexual orientation.<sup>11</sup> It is expected that this law will be adopted and will enter into force in 2001.

## **Family law**

### *Kinship*

In 1991 the reinstated 1937 Civil Law was amended by Article 35.2 prohibiting marriage between per-

sons of the same sex. Simple cohabitation of persons, whether of mixed or the same gender is not recognised in Latvian law and only marital status is taken into account in civil law and many other areas of legislation. Thus unmarried partners, including lesbian and gay couples, cannot become a family, in terms of the law, nor be considered as relatives, and consequently face wide disadvantages and discrimination compared to married couples.

### *Property regime*

Civil Law provides two forms of regulating married partners' property: according to the law and through a marriage contract. Where a dispute over property arises in case of divorce, the partners can ask the court to resolve the dispute. Lesbian and gay couples are denied the opportunity to regulate their joint or separate properties and in case of dispute cannot resolve it in court.

### *Support obligations*

During marriage partners are obliged to support each other and care for the welfare of their family. After a dissolution of marriage, an ex-partner who does not have sufficient income may ask the other to contribute. Same-sex partners do not have the same right to support.

### *Adoption*

Adoption is open to every capable person who is at least 25 years of age and at least 18 years older than the adopted child, and is theoretically open to lesbians and gay men individually. The law allows for adoption only if this is "in the interests of the child". An investigation and decision of the Orphan's Court is necessary for any adoption to take place. It is very doubtful that the Orphan's Court would allow the adoption of a child by a person known to be homosexual. Additionally, according to Civil Law, persons "who are not married cannot simultaneously adopt the same child".

<sup>7</sup> Article 78 of the Criminal Law.

<sup>8</sup> Article 150 of the Criminal Law.

<sup>9</sup> By the Latvian Association for Sexual Equality in 1995, Latvian National Human Rights Office in 1996, and the MPs from the Parliamentary fraction "For Human Rights in Integrated Latvia" in 2000.

<sup>10</sup> Article 280 of the Criminal Law.

<sup>11</sup> Article 7 "Principle of equal rights" reads: "(1) Every person shall have equal rights to employment, to an equitable, safe work environment which is not harmful to health, and to fair payment for work.

(2) The rights referred to in paragraph 1 of this article shall be guaranteed without any discrimination in regard to sex, race, skin colour, language, age, religious, political or other conviction, ethnicity, nationality, social background, sexual orientation, or material or other status."

### *Parenting*

Lesbians and gay men who have had children in a previous heterosexual relationship can face discrimination if a dispute arises over child custody and visiting rights. If during divorce parents cannot agree over the custody of a child the court must resolve this dispute “taking into account the interests of the child”. Similarly each parent has a right to visit a child who is left with the other parent except in cases where “visiting may harm the child”. Disputes over visiting rights are resolved by the court under similar guidelines involving the “interests of the child”.

### *Inheritance*

The Civil Law provides for three forms of inheritance: according to law, testament, and inheritance contract. If a person dies without leaving a testament or signing an inheritance contract all property will be divided according to the law and distributed to the spouse, relatives and adopted children. Thus, if a married person dies without leaving a will or contract his/her married partner will inherit anyway, but in a similar situation a lesbian or gay partner will not, since cohabitation does not constitute a basis for inheritance according to the law.<sup>12</sup>

The two other forms of inheritance provide for more security that a person's property will be distributed according to his/her wishes, but the concept of “compulsory beneficiary” limits freedom of testament and contract.<sup>13</sup> “Compulsory beneficiary” covers spouses, descendants, and where these are lacking, parents or grandparents. These “compulsory beneficiaries” are entitled to a “compulsory part”, which is half of the property they would be entitled to if they inherited according to the law. If a person leaves a will or a contract without taking account of the “compulsory beneficiaries”, the latter have a right to appeal in court for their “compulsory part”. Thus, if a lesbian or gay man leaves a will or contract in favour of his/her partner, this can be appealed against by the “compulsory beneficiaries”, but same sex partners do not themselves qualify as a “compulsory beneficiary” with the right

to appeal against their partner's will or contract in case the partner did not consider their interest.

### *Housing*

In regard to housing rights, only a tenant's family members are entitled to the same rights as the tenant.<sup>14</sup> In case of a tenant's death the law allows only the tenant's family members to request the transfer of a rent contract.

In Latvia every person must be registered with the municipality under the person's actual address. This procedure does not only have a symbolic meaning: certain rights and freedoms depend upon registration. The registration procedure is relatively complicated. When a person wishes to register another person at his/her address, married partners are in a much more favourable situation than lesbian and gay partners, since the latter have to obtain the written permission of the municipal authority, which is not required for a married couple.<sup>15</sup>

### *Pension and social security*

Only family members have a right to a lost provider pension.<sup>16</sup> This type of pension is paid to those family members who were dependent on the provider's income. Thus if an unemployed lesbian or gay man whose only means of support was their partner's salary loses that partner, they will not be entitled to a lost provider pension. The law also stipulates that if a person in receipt of pension dies before their next due payment, only that person's spouse and relatives are entitled to any unpaid amount.

Similarly only spouses and other family members – and not lesbian or gay partners – benefit in a case of the loss of an insured partner.<sup>17</sup>

### **Health care law**

Health care law identifies the circle of persons whose views are considered when a person is committed to a mental hospital against his/her will, or when a person is incapable of giving or withhold-

<sup>12</sup> R.Krauže, Z.Gencs “Latvijas Republikas Civillikuma komentāri”, “Mans Īpašums”, Rīga, 1997, p.22.

<sup>13</sup> Zigmunds Gencs “Mantojuma kārtošana”, “Mans Īpašums”, Rīga, p.62.

<sup>14</sup> Law of 1 April 1993 “On a Rent of a Living Space”, Article 9.

<sup>15</sup> Decision No. 186 of 13 April 1993 by Cabinet of Ministers.

<sup>16</sup> “State Pension Law” of 23 November 1995.

<sup>17</sup> Law of 2 November 1995 “On Compulsory Social Insurance Against Accidents at Work and Work-Related Illness”, Article 23.

ing consent to medical treatment. This list only includes this person's family members and relatives. Thus lesbians and gays do not have any rights in a case of this nature involving their partners.

Currently there is no legislation regulating medically assisted artificial insemination, which is available only in a few clinics. These clinics confirmed that current practice does not require the recipient to be married; neither is she asked about her sexual orientation.

A draft law "On Reproductive Health", currently in preparation, defines potential parents as a "heterosexual couple which will bring up a child born out of artificial insemination". However, according to the draft law, medically assisted artificial insemination could take place on the basis of a request by a heterosexual couple or a woman. Thus it is difficult to conclude whether, according to the current draft, medically assisted insemination is limited only to heterosexual couples or whether it will also be available to single women and lesbians.

One of the groups affected by the HIV/AIDS epidemic is gay men. Until 1997 the majority of registered cases were among gay men. Currently gay men constitute 18% (81 of 452) of all registered cases of infection.<sup>18</sup> Free and confidential testing is available. The State budget also sponsors combination therapy for people living with HIV. Despite the increase of infections among gay men, there have not been education and information programmes or campaigns targeted at this group. The official 1999-2003 programme on HIV/AIDS prevention does not allocate resources from the state budget for work with gay men, which relies solely on donations and other resources.

### Immigration and asylum law

Only married foreign partners of Latvians are entitled to obtain a permanent residency permit.<sup>19</sup> Thus foreign partners of Latvian lesbians and gay men cannot stay in the country solely on the basis of a

relationship with a Latvian citizen or inhabitant. Similarly, partners of Latvian lesbians and gay men who are not Latvian citizens but residing in Latvia cannot apply for Latvian citizenship outside the normal procedure. An accelerated and simplified procedure is provided for the married partners of Latvian citizens in a similar situation.<sup>20</sup>

Latvian legislation dealing with the issues of asylum seekers and refugees does not specifically refer to persecution on grounds of sexual orientation as possible grounds for asylum.<sup>21</sup> Nevertheless, officials of the Centre for Refugees of the Ministry of the Interior stated that the Centre will closely follow the UN High Commissioner for Refugees' interpretation of the term "social group", which appears in Latvian law, as including lesbians and gay men. So far there have been no cases of persecuted lesbians or gay men claiming asylum in Latvia.

The Consular Department of the Ministry of Foreign Affairs does not possess information on individuals from Latvia seeking asylum or being granted refugee status in other countries because of persecution or threats of persecution on the grounds of their sexual orientation. The Homosexuality Information Centre is aware of at least one occasion when a gay man from Latvia has claimed asylum in another country.<sup>22</sup>

### Victims of Communist and Nazi regimes

Victims of both the Communist and Nazi regimes enjoy certain privileges and are entitled to compensation. In order to qualify, a person has to satisfy a number of requirements.<sup>23</sup> Theoretically those lesbians and gay men who were imprisoned or forcibly admitted for psychiatric treatment during the Soviet occupation are entitled to these privileges and compensation. Nevertheless, the law requires that the cause of repression must not be against the laws of Latvia during its first independence. Consensual sexual acts between men were criminally punishable during Latvia's first period of independence.<sup>24</sup>

<sup>18</sup> Data on 1 November 1999. HIV/AIDS. Informatīvs biļetens No.5, 1999. gada novembris, AIDS profilakses centrs, p.6.

<sup>19</sup> Law of 9 June 1992 "On Foreign Nationals and Stateless Persons Entering and Residing in the Republic of Latvia", Article 25.

<sup>20</sup> "Citizenship law" of 22 July 1992, Article 13 (7).

<sup>21</sup> Law of 4 July 1997 on "Asylum Seekers and Refugees in the Republic of Latvia."

<sup>22</sup> Request by the Immigration and Refugee Board in Canada, April 2000.

<sup>23</sup> Law of 12 April 1995 "On the Definition of the Status of Politically Repressed Person having Suffered during the Communist and Nazi Regimes".

<sup>24</sup> Article 516 of the Criminal Law (1918-1933); Article 496 of the Criminal Law (1933-1940).

So far there have been no cases in which lesbians or gay men have attempted to apply for the status of repressed person, nor is it clear whether the Commission for the Investigation of the Crimes of Totalitarian Regimes would accept such an application.

## Other areas of discrimination

### *Slander*

According to a recent defamation case, to call somebody a "homosexual" is a criminal offence under Article 128 of the Criminal Code, "Slander". In 1996, after the Chairman of the Latvian Anti-alcohol Society Atis Silaroze called 17 members of parliament homosexuals, some of these MPs initiated criminal proceedings against him. In September 1997 the Court of the Latgales District of the City of Riga found Atis Silaroze guilty and fined him in accordance with Article 128. Interestingly the Court did not call for any evidence to be presented regarding the MPs' alleged homosexuality. In summer 1998 Atis Silaroze filed an appeal but the verdict of the lower court was upheld.

### *Prison*

Only certain close relatives are entitled to long-term (up to 36 hours in private) meetings with an imprisoned person.<sup>25</sup> Other persons, including unmarried partners, are only entitled to such a meeting if an imprisoned person does not have any relatives and only with the permission of the prison administration.

Correspondence with convicted persons is prohibited if it is not with their relatives.

### *Hiding of a criminal, refusal to report a crime and to testify in a court*

Under the Criminal Law only "the fiancé(e), spouse, parents, children, brothers and sisters, grandparents and grandchildren" of a person who has committed

a crime are exempt from prosecution for hiding that person, and/or for not reporting the crime to the authorities.<sup>26</sup> The same categories of persons are freed from criminal responsibility for refusing to testify in court against a person charged with a crime.<sup>27</sup>

### *Civil service*

Civil servants are entitled to a 10% supplement to their monthly salary if their married partner is not working and does not receive unemployment benefit or other regular income.<sup>28</sup> If a civil servant dies in the exercise of her/his duties, the civil servant is buried at the State's expense and her/his family receives a payment equivalent to 2 years' salary.

### *Tax reduction*

In a case where one married partner is unemployed, the working partner is entitled to a reduction in income tax,<sup>29</sup> but unmarried partners cannot obtain this.

## Social situation

### Public opinion

In the last decade general attitudes towards homosexuals have changed considerably. In 1990 only 25% of Latvian adults were in support of decriminalisation of homosexuality, 40% could not answer and 35% supported criminalisation.<sup>30</sup>

In 1994, a newspaper poll showed that 25% were in favour of legalisation of same-sex marriage, 45% opposed, while the remainder were either "don't know" or stated that they "would probably be in favour".<sup>31</sup> Two other polls by the same newspaper found that the vast majority of people did not support other kinds of discrimination such as dismissal from employment.<sup>32</sup>

<sup>25</sup> Article 45 of the Sentence Implementation Code.

<sup>26</sup> Article 22 of the Criminal Law.

<sup>27</sup> Article 303 of the Criminal Law.

<sup>28</sup> Law of 3 May 1994 "On the Civil Service", Article 36.

<sup>29</sup> Law of 11 May 1993 "On residents' income tax", Article 13.

<sup>30</sup> September 1990 poll by the Market and Social Research Centre "Baltic Data House". Communication with Brigita Zepa, Director of the Centre, October 1999.

<sup>31</sup> "Vakara Ziņas", August 1994.

<sup>32</sup> "Vakara Ziņas", 30 October 1997, 21 April 1998.

1998 polls revealed that homosexuals constitute one of the largest groups of people who do not have society's trust (70% of respondents).<sup>33</sup>

A 1999 poll revealed that the majority of the public accepts homosexuals and their partnerships.<sup>34</sup> Thus 63% agreed that persons with homosexual orientation are an equal part of society (31% disagreed and 6% could not answer) and 53% supported the idea of legal recognition of partnerships between persons of the same gender (35% did not support and 11% could not answer).

While the situation might seem to have improved, common stereotypes and myths, lack of information and first-hand experience dominate the creation of the general public's attitude to homosexuality.

Psychologists at the University of Latvia found that a majority of people share common myths and stereotypes regarding homosexuals such as homosexuality is a matter of personal choice, a sin, sexual perversion, dangerous to heterosexuals, result of incorrect upbringing, all-allowance and advertising of homosexual relations and "homosexuals just want to 'stand out' in the society mass".<sup>35</sup>

Society generally does not distinguish between homosexuality and paedophilia. Homosexuals are therefore often viewed as a threat to child security and accused of sexual abuse of children.

Despite the fact that Latvia has adopted the 10<sup>th</sup> version of the World Health Organization's International Classification of Diseases that does not define homosexuality as an illness, many professionals continue to regard it as such and even suggest treatment in the form of diet or drugs.

Homosexuality is very often viewed as incompatible with the Latvian identity and threatening to the nation. The development of lesbian and gay organisations was once described as nothing less

than "planned genocide against the Latvian nation" and a "gross violation of the human rights" of the Latvian people. The government was asked to adopt legislation limiting lesbian and gay activities "for the sake of the future of the Latvian nation and the stability of the Latvian State".<sup>36</sup>

Lesbians and gay men were regarded as "living corpses" and "fungus on the living trunk of the nation's tree, feeding on its roots" by the popular health magazine because "the fruit of their love is not a child".<sup>37</sup> This is especially symbolic given that the oak tree is one of Latvia's national emblems.

The Latvian National Democratic Party regards the development of the lesbian and gay scene as a danger to "the spiritual and physical development of the Latvian nation".<sup>38</sup> This party included openly homophobic statements in its most recent manifesto and demands legislation limiting and prohibiting certain activities by lesbian and gay organisations. After the party acknowledged "the beginning of a wide-ranging campaign against homosexuals"<sup>39</sup> a bomb exploded at the lesbian and gay nightclub "Purvs" which was described in the party's newsletter as "a den of degenerates".

A senior official of the Ministry of Justice, commenting on the possibility of legalisation of same-sex partnerships stated that a country like Sweden could afford such laws whereas Latvia is "too small for that" and "it is not acceptable for the Latvians".<sup>40</sup>

On various occasions the now former Prime Minister Andris Šķēle stated that only "correctly oriented" people can create a nation and that "differently oriented" people should not be allowed to occupy responsible State positions. Šķēle repeatedly regarded homosexuality as an illness.<sup>41</sup>

Juris Bojārs, chairman of the Latvian Social Democratic Workers Party, stated that "homosexuality is not a part of Latvian mentality".<sup>42</sup>

<sup>33</sup> Latvijas iedzīvotāju aptauja "Cilvēktiesības", 1988., janvāris; Projekts "Ceļā uz pilsonisku sabiedrību", Latvijas iedzīvotāju aptauja, 1997. gada novembris – 1998. gada janvāris; Tirgus un sociālo pētījumu centrs "Baltijas Datu nams".

<sup>34</sup> From 27 September to 6 October 1999 the Market and Social Research Centre "Baltic Data House" carried out a multistage random sample computer assisted telephone interview (CATI) covering all regions of Latvia and involved 461 respondents.

<sup>35</sup> Jolanta Cihanoviča, Anika Miltuze, Anda Gaitniece-Putanē: "Adolescents' Myths and Stereotypes about Homosexuality", paper presented at the International School of Psychologists' Colloquium in Switzerland, 1999.

<sup>36</sup> Statement by nine family organisations and political parties ("Demand for Morality!"), *Neatkarīga cīņa*, 27 February 1993.

<sup>37</sup> Adriāns Ābeltiņš: "Dzīvie mironi jeb seksualas minoritātes" in *Veselība*, Nr. 10, October 1993.

<sup>38</sup> *10%*, Nr. 1, May 1998.

<sup>39</sup> *SM-Sedonja*, 21 October 1997.

<sup>40</sup> *Vakara Ziņas*, 25 August 1995.

<sup>41</sup> *Rīgas Laiks*, Nr. 3, 1996. Latvian State Radio, 24 February 2000.

<sup>42</sup> *Diena*, 24 February 2000.

Reacting to the submission of a partnership proposal to the Parliament, a new organisation called the "Latvian Society without Homosexuality" was established in 1999. This organisation openly expresses anti-homosexual views, spreads false information regarding homosexuality and categorically opposes any acceptance of or improvement for lesbians and gay men. Chairman of this organisation, Andris Baumanis, has stated that "homosexuals are carriers of death and undermine our demography".<sup>43</sup>

### The media

Since independence the subject of homosexuality appears more frequently in the mass media. Generally speaking the media is quite neutral. Mostly, opposing views are presented. However there is still a large amount of information containing ignorant expressions which reinforce stereotypes and myths about lesbians and gay men. Considering the newness of the topic within society, homosexuality is often used to produce outstanding and sensationalistic material to increase the popularity of various shows and newspapers. Positive and/or objective information about homosexuality is often considered as promotion of homosexuality.

### Church and religion

Latvia is a multi-denominational country and there is no single prevailing church.<sup>44</sup> According to Latvian law the church is separated from the State.<sup>45</sup> Nevertheless, the Evangelical Lutheran Church in particular very actively opposes lesbian and gay rights. In September 1994 the Consistory (governing body) of this Church published a resolution in which it stated that "deliberately" practising homosexuals cannot be allowed to fulfil any responsibilities during parish services or within the Church hierarchy, and that they shall also be excluded from Eucharistic communion.<sup>46</sup>

The Latvian Baptist Church adopted a similar resolution. Olafs Brūvers, the Director of the Latvian National Human Rights Office, who although not

practising was ordained as a Baptist minister, was requested to step down as a minister after a partnership proposal was submitted to Parliament by the Office. Representatives of this Church informed the Director that supporting lesbian and gay rights is incompatible with the Church's doctrine.

Although other Christian denominations have not gone so far, and have not adopted any documents regarding homosexuality, they all support the condemnation of homosexuality and regard it as a grave sin. In October 1999 the officials of the five main denominations in Latvia (Evangelical Lutheran, Roman Catholic, Russian Orthodox, Baptist and Old Believers) signed a joint letter of protest against the consideration by Parliament of a proposal to adopt a partnership law. Comparing homosexuality to kleptomania, vampirism, alcoholism and drug addiction, the church leaders claimed that whether "these sicknesses are inborn or obtained in practice, we have to fight them and not provide new laws favourable to them".

### Violence against gays and lesbians

Although not frequent, there are reports of physical attacks against lesbians and gay men. The vast majority of these occur in cruising areas where gay men are intimidated by queer-bashers on quite a regular basis. None of these attacks are reported since there is then a risk of revealing a person's homosexuality, and indeed no trust of the police which itself has a record of harassment against homosexuals.

The most outrageous case of violence involving the police took place in 1995 in Sigulda when representatives of the special security forces seriously beat two people during Latvia's traditional mid-summer celebrations.

On various occasions the police have interrupted lesbian and gay discos and assaulted partygoers.<sup>47</sup>

<sup>45</sup> Article 99 of Constitution. Article 5 of a law of 7 September 1995 "On Religious Organisations".

<sup>43</sup> "Human Rights in Latvia in 1999", Latvian Centre for Human Rights and Ethnic Studies, p.22.

<sup>44</sup> The main Christian denominations are the Evangelical Lutherans and Roman Catholics, with approximately 500,000 people each, and the Russian Orthodox, numbering some 100,000 believers, around 70,000 Old Believers, and 7,000 Baptists. Information from the Ministry of Justice of the Republic of Latvia of 16 January 1996.

<sup>45</sup> Article 99 of the constitution. Article 5 of the law of 7 September 1995 "on religious organisations".

<sup>46</sup> *Solis*, 23 September 1994.

<sup>47</sup> This took place in October 1993 in a disco at Sadovņikova iela, March 1994 in a disco "Loks" and in August 1995 during the "Love Party" to celebrate the first unofficial registration of lesbian partnership.

In April 1998 dismissed policeman Gatis Bugoveckis was beaten up by a group of hooligans. Although both Gatis and his attackers were taken to the police station, police representatives transparently treated the hooligans favourably and humiliated Gatis. The police refused to accept a report from Gatis, which contained a request to initiate criminal prosecution against his attackers.

## Education

The issue of sexual orientation is included in the school curriculum both in basic and secondary schools. The Ministry of Education and Science has stated that it aims “to help each pupil to realise his/her belonging to a particular gender, understand self and other persons’ needs, understand causes of different sexual orientations, promote understanding that everyone has a right to his/her sexual orientation”. Literature on health and sex education approved by the Ministry and suggested for schools is either neutral or positive. The real problems often occur in schools, where teachers of health and sex education are ignorant, hesitant or hostile regarding such coverage of homosexuality.

The Latvian Association for Family Planning and Sexual Health and the Latvian Family Centre play a very important role in sexual health education among youth and health teachers and help to fight stereotypes and myths regarding homosexuality.

Despite a recent increase of interest in the subject of homosexuality among psychology, law and social science students, they often face hostility by the heads of departments, lack of available literature and qualified supervision.

## Military service

Latvian legislation regulating state military services such as the army, police, security services, etc., does not contain provisions preventing persons with homosexual orientation from serving or working for these services. Military authorities have stated that sexual orientation is an irrelevant characteristic during recruitment and a person’s sexual orientation cannot be a reason for preventing a person from

joining the military service or dismissing him/her from service.

However, as was mentioned above, Gatis Bugoveckis’s homosexuality was the only reason for dismissing him from his job in the police force. Further, statements by various MPs and military authorities supporting discrimination against homosexuals in the police and army also cause serious concern. There is also evidence that candidates are questioned about their sexual habits during recruitment.

It is important to note that military service is still compulsory in Latvia for all males from the age of 18 and there is no provision for any alternative service (for example because of conscientious objection). Many gay men are not willing to serve in the military services, which in practice are considered very homophobic and not a safe environment for gay men, but are still forced to do so.

## Relations with international institutions

The issue of lesbian and gay rights has never been specifically addressed by international institutions in relation to Latvia. However, anti-gay legislation was repealed in May 1992 as a part of Criminal Code reform to comply with the requirements of the Council of Europe. Latvia was praised for changes regarding the age of consent in the Resolution adopted by the European Parliament.<sup>48</sup> 1997 and 1999 European Commission reports on the progress of Latvia’s accession to the EU contain no reference to lesbian and gay rights. In October 1999, the Homosexuality Information Centre provided the EU Commissioner for Enlargement with a detailed report on the lesbian and gay situation. In its reply the Commissioner’s Office said that the report would be examined and taken into account in assessing the situation in Latvia. A similar report was submitted to the United Nations Human Rights Committee in 1999 when Latvia was due to present its report on human rights to the Committee.

<sup>48</sup> Recital H, Urgency Resolution “On Equal Rights for Gays and Lesbians in the EC”, 17 September 1998; B4-2824 & 0852/98, PE 272.005/79.

## Good practice and recent developments

Lesbian and gay organisations have already existed for a decade now. The Latvian Association for Sexual Equality (LASV) was established in 1990 and in 1997 re-organised into the Homosexuality Information Centre. There has been a significant increase in the general public's awareness regarding lesbians and gay men and their rights. Lesbian and gay visibility is also increasing.

Legislation criminalising consensual acts between men was repealed, several proposals to ensure anti-discrimination legislation have been submitted to the Parliament and there is a likelihood that discrimination in employment will be banned by a new Labour Law. A first attempt to secure the legal recognition of lesbian and gay partnerships was made by submitting a partnership proposal to the Parliament.

The lesbian and gay organisation was successful in building a dialogue with other NGOs. A very successful co-operation was achieved with the Latvian Association for Family Planning and Sexual Health and the Latvian Family Centre who work in the area of health and sex education. Incorporation of the lesbian and gay rights agenda into a general concern of the NGO sector was demonstrated by an appeal to Latvian authorities by several hundred NGOs. This appeal underlined the importance of building Latvia as a state where each individual's rights are secured and promoted *inter alia* on the grounds of sexual orientation.<sup>49</sup>

Perhaps the most successful co-operation has been achieved with the main state human rights institution – the Latvian National Human Rights Office. The Office's determination to work for lesbian and gay rights has been demonstrated by submitting proposals for legislation banning discrimination on the grounds of sexual orientation, and delivering an Opinion in the first anti-discrimination case. This co-operation culminated in major research on lesbian and gay rights with consequent submission to the Parliament of a proposal for registered partnership legislation.

Successful cooperation has also been established with MPs from the parliamentary fraction "For Human Rights in Integrated Latvia" who supported

the partnership proposal and proposed to include sexual orientation in the anti-discrimination provision of the Criminal Law.

For the past decade the Latvian capital, Riga, has experienced the development of a lesbian and gay scene that now includes several exclusively lesbian/gay and lesbian/gay-friendly night-clubs and bars. Latvian lesbians and gay men also have their own Internet web-site. The Homosexuality Information Centre is also currently developing a web-site.

## Recommendations

- (a) Elimination of discrimination and provision of equality regardless of a person's sexual orientation. This could be achieved by amending existing anti-discrimination articles or the introduction of new articles in the Criminal Law and Labour Law with provisions banning discrimination on the grounds of sexual orientation.
- (b) Providing equality before the law regarding sexual offences. Heterosexual rape is separated from all other forms of sexual violence and carries a heavier punishment. Offenders' and victims' equality before the law could be achieved by rephrasing or expanding the rape article so that it is gender-neutral and covers all rapes.
- (c) Legal recognition of lesbian and gay partnerships. This could be achieved by the repeal of prohibition of same-sex marriages or the introduction of a law on registered partnership between persons of the same gender.
- (d) Victims of the Nazi and Soviet regimes. To amend appropriate legislation to cover repressed lesbian and gay victims.
- (e) Promoting tolerance. To incorporate tackling of homophobia into the recently adopted state Programme on Integration designed to promote greater tolerance.

**Juris Ludvigs Lavrikovs,**  
*Homosexuality Information Centre*

<sup>49</sup> "NVO ziņas", No. 6, November/December 1998

## Chapter 7: Lithuania

### Description of the legal situation

#### Criminal law

Independent Lithuania inherited Soviet legislation on homosexuality and the taboo surrounding it. Despite the existence of constitutional guarantees of equality and privacy, consensual gay male sexual acts remained criminalised for three years following Lithuania's declaration of independence from the Soviet Union in 1990. Before its repeal in 1993, the infamous article of the Penal Code retained its Soviet formulation:

Article 122 (1): "Sexual acts between men<sup>1</sup> shall be punishable by incarceration for a period of up to three years."

Lithuania was last among the three Baltic countries to abolish severe penalties for consensual homosexual acts. The repeal of the sodomy law on 11 June 1993 was passed by the Parliament without any public discussion or contribution from gay people. It was achieved following international pressure from homosexual groups in Western Europe (members of ILGA) and the insistence of the Council of Europe that Lithuania conform to basic human rights standards in order to gain membership.

Only paragraph 1 of Article 122 was removed. Article 122 is still in force with its paragraph 2, which provides penalties of up to eight years for sexual relationships between men involving violence or threats or committed in relation to a minor under 18 years old. The title of the article remains the same – "Sexual acts between men" – and creates a certain misunderstanding among the general public about the legal status of consensual gay sex. This article maintains a discriminatory age of consent for gays at 18. If a man has consensual sex with a 17 1/2-year-old male, he will be punished by incar-

ceration of up to eight years, while if a man has consensual sex with a 17 1/2-year-old female, he will not be prosecuted.

Lesbian sex acts are not mentioned in the Penal Code.

The Vice-Minister of Justice has acknowledged that under the current Penal Code the age of consent for heterosexuals and lesbians is 14 and for gay men 18. "Such regulation has also caused criticism from Lithuanian lawyers – a voluntary satisfaction of sexual lust between pubescent men can not be rated as a crime, since in this case there is no violation of sexual self-determination or integrity", Vice-Minister Gintaras Švedas wrote in his explanation to the European Committee of the Seimas (Parliament). He told the BNS news agency that the new draft Penal Code would not contain such discriminatory regulation.

Parliament voted the new Penal Code on 26 September 2000. It will come into force by the end of 2001 at the earliest, after harmonisation with the Administrative Code and other codes. Some experts say that this process might take up to four years.

#### Anti-discrimination law

The new Penal Code will also ban discrimination on a wide range of grounds, including sexual orientation.<sup>2</sup>

Article 169, "Discrimination on the grounds of nationality, race, sex, origin, religion or other group membership", states:

A person who performed acts which were aimed at preventing a population group or any of its members from participating equally in political, economic, social, cultural, work or other activities or at restricting such rights or freedoms of a population group or any of its members because of their sex, sexual orientation,

<sup>1</sup> The Russian term is "muzhelozhstvo" – defined as "satisfaction of sexual desire contrary to nature between two men in the form of anal contact". See A. Ya. Sukhareva and V. E. Krutskikh Bolshoi (eds) (2000): *Yuridicheskii Slovar* [Great Legal Dictionary], 2<sup>nd</sup> ed., Moscow: Infra-M. This was the case for the Russian Soviet Republic and most of the other Soviet Republics (see also footnote 9 in the chapter on Estonia, p. 24). In the Lithuanian Soviet Republic, however, "muzhelozhstvo" was interpreted as also covering oral sexual contacts between men. The current age of consent provision is also interpreted by courts as covering anal and oral sex; cf. Helmut Graupner (1997): *Sexualität, Jugendschutz und Menschenrechte*, Frankfurt/Main et al., Peter Lang, Vol. 2, p. 530.

<sup>2</sup> Penal Code (adopted by Law of 26 September 2000, Nr. VIII-1968).

race, nationality, language, origin, social status, religion, beliefs or opinions, shall be punishable by public works or fine, or restriction of freedom, or arrest, or imprisonment of up to three years.

Article 170, "Incitement of hatred against any national, racial, ethnic, religious or other population group", also provides for up to three years imprisonment for persons or companies:

Which jeer, disdain, incite hatred or initiate discrimination against a population group or any of its members because of their sex, sexual orientation, race, nationality, language, origin, social status, religion, beliefs or opinions.

This is the first time in Lithuania's legal history that "sexual orientation" has been mentioned in law. The first draft of the new Penal Code, published in 1996, offered no protection from discrimination on the grounds of sexual orientation. Vigorous lobbying by the Lithuanian Gay League, the leading national NGO for gay, lesbian, bisexual and transgender rights, supported by the media, resulted in the new ground-breaking legislation.

The first ever legal case involving dismissal from work on the grounds of a person's sexual orientation started in October 1999 in Vilnius. Stasys Dimbelis was sacked as a consultant on gay issues at the Lithuanian AIDS Centre in July 1999. He claims this was because of his sexual orientation and wants either reinstatement or compensation. The director of the centre, Saulius Čaplinskas, argues that some staff were dismissed after a decision to concentrate on treating AIDS rather than on prevention.<sup>3</sup> The case is still pending.

## Family law

The new Civil Code adopted in July 2000 explicitly bans same-sex marriage by Article 3. 12 of book 3: "Ban on marriage for same-sex persons". Another Vice-Minister of Justice, Rasa Budbergytė, stated in 1999 that Lithuanian society is not ready to accept same-sex marriages. "The majority of people in Lithuania are Roman Catholics and maintain an antagonistic attitude towards homosexuality", she told BNS.<sup>4</sup>

<sup>3</sup> *The Baltic Times*, 14 October 1999.

<sup>4</sup> *Lietuvos rytas*, 4 August 1999.

<sup>5</sup> *Lietuvos rytas*, 18 November 2000.

Same-sex couples cannot adopt children. There is one known case in Vilnius when a divorcing husband used his ex-wife's partnership with an open lesbian to win custody rights over the couple's child.

The Civil Code does not include the regulation of artificial insemination. The draft version of the Code restricted in-vitro fertilisation to married women, with only their husband permitted to be the donor. Protests from doctors led to the postponement of artificial insemination legislation. At the moment, under the regulation of the Minister of Health, artificial insemination is restricted to married women, with only their husband permitted to be the donor.

## Immigration and asylum law

Sexual orientation is not specifically recognised in the legislation governing asylum. Lithuania is a signatory of the Geneva Refugee Convention and might potentially recognise homosexuals as members of a social group facing persecution. There have been no (known) cases so far in which asylum has been sought on the grounds of persecution because of sexuality. However, since 1993 the Lithuanian Gay League (LGL) has received numerous requests from lawyers in the UK, Canada, USA, France and Belgium relating to Lithuanian lesbians and gays seeking asylum on the grounds of sexual orientation persecution.

## The social situation

### Public opinion

European research on human values from 1991 reveals that Lithuanian citizens have the lowest rate of acceptance of homosexuality in Europe. The researchers used a scale of 10 points to measure the tolerance for homosexuality. In 2000, Lithuanian citizens rated 1.9 points only and remained among the most homophobic in Europe together with the inhabitants of Latvia and Romania. The poll shows that 68 percent of Lithuanian respondents do not want to live in a neighbourhood with gay people.<sup>5</sup> Negative attitudes towards lesbians and gay men are particularly strong amongst older, nationalist and Catholic citizens. Unfortunately this outlook is reflected in the policies of social institutions, particu-

larly the education and health services, which for the most part deny the very existence of lesbians and gay men in this society.

Responding to a question regarding the status of homosexuals in Lithuania at an April 1994 Council of Europe meeting, the then President Algirdas Brazauskas said: "Lithuania has a lot of problems, and the problem of homosexuality is not very big." He promised to deal with the problems of gay people with regard to international practice.<sup>6</sup> Later he told a *Diena* journalist that "it was the most difficult and unpleasant question I had to answer". He has not made a statement since. The current President, Valdas Adamkus, continues the ten year long tradition of ignorance towards lesbian and gay citizens by refusing to speak about their concerns in public.

In April 1999, President Valdas Adamkus received the credentials of the new Australian Ambassador to Lithuania, Stephen Brady, who introduced in the ceremony his partner, Peter Steven, an architect. This was unprecedented in Lithuanian diplomatic history. According to the press, Adamkus was not shocked by the "open demonstration of sexual orientation", although until then foreign envoys to Lithuania used to bring their spouses to the ceremony of exchanging ambassadorial credentials. "The President does not care who accompanies the ambassador", a presidential spokeswoman said.<sup>7</sup>

This "scandal" revealed the scale of homophobia among Members of Parliament. The Christian Democrats proposed to boycott the Australian Ambassador. Right wing nationalists labelled him as a "pederast" and "pervert" in their interviews with a Russian television channel. No Member of Parliament supported the gay ambassador by challenging these public insults.

For both the Government and the Parliament to dismiss lesbian and gay human rights is to deny the existence of discrimination in a fashion that has real political repercussions. Lesbians and gays are relegated to the margins of society, where they are not represented in legal documents and public life, thus allowing stereotypes to be perpetuated.

In honour of the "Year of Tolerance", Lithuania's Parliament (the Seimas) passed a statement on 15 February 1995 which denounced any "ideology

which instigates racial hate, violence and discrimination, and any actions which create stress and distrust between different racial, ethnic, national, religious or social groups". The failure to recognise discrimination based on sexual orientation in such documents demonstrates that there are still limits to tolerance in Lithuania.

Similarly, a 1995 seminar on tolerance and democracy hosted by the Teacher's Institute at the Lithuanian College of Democracy declined a request by Vladimir Simonko, chairman of the Lithuanian Gay League (LGL), to participate in the plenary sessions.

Violence against gay and lesbian people is increasingly visible. In 1995, robbery and assaults took place in the first official Vilnius gay bar "Amsterdam", although these were not reported to the police in order to protect the customers. In the absence of hate crime legislation, the police can only issue a small fine for the perpetrators of harassment against homosexuals. The recent case of a harassed lesbian couple showed that the Lithuanian courts are unwilling to recognise homophobic hatred as a motive for a criminal offence. A male neighbour of an openly lesbian couple living in Vilnius was sentenced only for damaging property, but not for death threats. LGL assisted in an appeal to a higher court, but the decision of the lower court was confirmed.

## The media

Journalists are the only advocates of gay people in the changing Lithuanian society. The first positive stories of LGL activists Irena Vanglikaitė, Aušra Chopaitė, Vladimir Simonko and Eduardas Platovas coming out were published on the front page of the biggest national daily *Lietuvos rytas* in October 1995 to commemorate the international coming-out day. The private media covers international lesbian and gay news. Local TV talk shows usually conceal the identity of the individuals concerned when discussing homosexuality, after LGL members who appeared openly suffered from violence and harassment after coming-out on air in 1995.

Homophobic views are expressed in some state run media and emerging tabloids.

<sup>6</sup> *Lietuvos rytas*, 15 April 1994.

<sup>7</sup> National daily, *Respublika*, 8 April 1999.

## Education

Education and information about homosexuality in schools is very limited. Though negative images may well be promoted, more usually it is by their omission from curricula that homosexuals are invalidated. Sexual education is poor for everyone, and frequently absent altogether. There are no education programmes at Lithuanian universities concerning gay men and lesbians. A small number of students of sociology are doing some research into the various aspects of homosexuality.

## Church and religion

In this overwhelmingly Catholic country, both gay rights activists and many of their opponents claim that the church is anti-gay. Following the Pope's stance on homosexual love, local Catholic church officials publicly condemned a 1997 symbolic marriage ceremony of two gay men in one of the biggest churches in the capital Vilnius.

## Lesbian and gay organisations

The gay movement in Lithuania started in 1991 with several groups holding social gatherings in Vilnius. Community building was prevented by the Ministry of Justice, which denied the registration of the first national lesbian and gay association in 1992 by reference to the then existing sodomy law. At the 1994 ILGA Eastern European Conference, Lithuanian representatives presented a model for organising local lesbian and gay human rights groups. This development and co-operation was continued with the 1995 ILGA anti-discrimination project. The first Lesbian and Gay Centre was opened in Vilnius on 20 January 1995. Unfortunately, it had to close after 18 months due to a lack of funds.

Two publications *Naglis* and *Amsterdamas* hit the streets in 1994 but were soon deemed "erotic and promoting violence" and banned from distribution through public press outlets. The ban led to the financial bankruptcy of the publishers.

Since its official registration in May 1995, the Lithuanian Gay League is the only national organisation visibly involved in lesbian and gay human rights issues. It is a mixed organisation with the lesbian group *Solida* concerned with women's issues.

LGL publishes a newsletter, runs a web-site and holds seminars twice a year with the support of exclusively Western donors. Activists have to use their private apartments for work and meetings.

There is only one gay disco, open on weekends in Vilnius. Local communities in the other major cities of Kaunas and Klaipėda socialise in small bars on weekends only. Two internet sites are the most visible signs of a lesbian and gay sub-culture and vital resources of information and communication.

Political parties, state authorities and even representatives of some international institutions ignore invitations to participate in seminars on lesbian and gay rights. LGL managed to start a dialogue with some NGOs although there is strong opposition from others, including human rights NGOs. Sexual minorities are excluded from the civil society programmes of several local foundations as well as the social and cultural agendas of municipalities.

Recently the Lithuanian Gay League protested the country's intolerance of sexual minorities. Its statement was a response to a petition from several radical nationalist youth organisations: the Young Lithuanians, the New Generation, and the Movement of Young National Democrats. The petition demanded that the Lithuanian authorities implement a programme to increase the number of child births, prohibit abortions and "free sexual relations", and ban gay and lesbian organisations. The petitioners have said that if their demands are not fulfilled, they will take "drastic measures".<sup>8</sup>

Reports about the situation of lesbians and gays have been requested by the embassies of the USA and Germany, but never by the Lithuanian Government. In 1999, the Lithuanian delegation to the Parliamentary Assembly of the Council of Europe ignored a questionnaire sent by the Sub-Committee on Human Rights on behalf of the rapporteur, Mr Csaba Tabajdi, in order to obtain detailed information about the situation of homosexuals in Lithuania. The recommendations by the European Parliament<sup>9</sup> concerning the equal age of consent for gays will be implemented by the new Penal Code.

**Eduardas Platovas,**  
*Lithuanian Gay League*

<sup>8</sup> *Lietuvos rytas*, 6 June 2000.

<sup>9</sup> Resolution "On Equal Rights for Gays and Lesbians in the EC", 17 September 1998; B4-2824 & 0852/98, PE 272.005/79.

## Chapter 8: Malta

### Description of the legal situation

#### Criminal law

From 1814 until 1964 Malta was under British colonial occupation and its Criminal Code, enacted in 1854, stems from that time. As in other places, the British authorities imposed on Malta a total ban on (hetero- and homosexual) anal intercourse, reflecting domestic British law during that period.

Article 220<sup>1</sup> of the Malta Criminal Code outlawed “any unnatural carnal connection” which, mirroring the English offence of “buggery”, was interpreted as heterosexual and homosexual anal intercourse. Any sexual penetration of or by an animal was also forbidden as “lewdness against nature”, thereby equating anal intercourse with bestiality.<sup>2</sup> The offence incurred a punishment of up to two years hard labour, with or without solitary confinement.<sup>3</sup>

The Criminal Code (CC) did not contain any other (discriminatory) provisions against homosexual

conduct, i. e. Malta did not take over the British Criminal Law (Amendment) Act 1885, which introduced the offence of “gross indecency between men” thereby also criminalising consensual homosexual acts other than anal intercourse. In 1973, Article 220 CC was abolished. Malta (together with Spain and the Vatican) has the lowest age of consent in Europe<sup>4</sup> at 12 years (Article 201 CC). However, Article 203 CC<sup>5</sup> contains a provision that makes it an offence punishable with up to two years imprisonment to “defile” a minor under 18 years by “lewd acts”.<sup>6</sup> Such a provision, based upon ambiguous terms such as “defilement” and “lewd acts” contains considerable potential for discriminatory enforcement.

Proceedings according to that provision can only be instituted upon complaint of the minor or of his/her legal representative (Art. 203 (3), 542 CC). This restriction does not, however, protect lesbian, gay and bisexual young people involved in same sex relationships from disciplinary action by their parents instituting (or at least threatening to institute) proceedings against their partners for having “defiled” them.

<sup>1</sup> Art. 220 CC: Unnatural Carnal Connection: “Whosoever shall be guilty of any unnatural carnal connection, without the circumstances of violence referred to in the preceding sections of this sub-title, shall, on conviction, be liable to hard labour for a term not exceeding two years, with or without solitary confinement.”

<sup>2</sup> Mamo, A. J. (1954-55): *Notes on Criminal Law*, Rev. Ed., Valletta, p. 210.

<sup>3</sup> Additionally (non-violent) sexual offences against minors involving anal intercourse could be instituted *ex officio* whilst such offences involving other sexual acts required a complaint by the injured party (Art. 538).

<sup>4</sup> The majority of jurisdictions in Europe established a minimum age limit of 14 or 15 years; “defilement” or “corruption” provisions today are unusual; Graupner, H. (2000): “Sexual Consent – The Criminal Law in Europe and Overseas”, *Archives of Sexual Behavior*, N.Y.: Plenum/Kluwer Ac., Vol. 29, pp. 415-461.

<sup>5</sup> Art. 203 CC: Defilement of Minors:

“(1) Whosoever, by lewd acts, defiles a minor of either sex, shall, on conviction, be liable to imprisonment for a term not exceeding two years, with or without solitary confinement:

Provided that the offence shall be punishable with imprisonment for a term from two to six years, with or without solitary confinement, in each of the following cases -

(a) if the offence is committed on a person who has not completed the age of twelve years, or with violence

(b) if the offence is committed by means of threats or deceit

(c) if the offence is committed by any ascendant by consanguinity or affinity, or by adoptive father or mother, or by the tutor of the minor, or by any other person charged, even though, temporarily, with the care, education, instruction, control or custody of the minor.

(2) ... [regarding deprivation of parental authority]

(3) No proceedings shall be instituted in respect of any offence under this section except on the complaint of the injured party: Provided that where the offence is not accompanied by any of the circumstances as to fact or person mentioned in paragraphs (a), (b), and (c) of subsection (1) of this section, the complaint shall not be admissible after the lapse of one year from the day on which the act was committed or knowledge thereof was obtained by the person entitled to lodge the complaint in lieu of the injured party:

Provided further that proceedings shall be instituted *ex officio* -

(a) in any of the cases referred to in the proviso to section 544 [concerns violence and abduction]

(b) when the act is committed with abuse of paternal authority or of tutorship.”

<sup>6</sup> “Lewd act” means sexual acts with or towards a minor. It does not include obscene words, gestures, pictures etc.

Maltese law does not contain protection against discrimination on the basis of “sexual orientation” or from incitement to hatred against lesbians, gays or bisexuals, let alone regulations containing the legal recognition of same-sex partnerships.

### **The social situation**

The social situation for lesbians and gay men in Malta is challenging. As a rather small community, privacy is difficult to obtain and social control is strong. Malta is also a Mediterranean country with a significant influence from the Catholic Church; traditional family values and clear-cut gender roles are predominant. Homosexuality is still a taboo, although it is tolerated so long as it is invisible and not presented as a life-style. As in many Mediterranean countries, homosexual experiences among males during adolescence are quite common but it is expected that people get married and found a family. Most lesbians and gay men, therefore, would stay in the closet, live a double life, get married or move abroad. Only recently, attitudes have started to change. And with the international media taking up more and more news stories and reports on lesbian and gay issues, the subject is also entering Maltese society. However, unlike, for example Cyprus, there is no organised gay and lesbian movement in Malta.

Information on the legal situation supplied by

**Helmut Graupner,**  
*International Lesbian and Gay Law Association*  
(*ILGLaw*)

## Chapter 9: Poland

### Description of the legal situation

#### Criminal law

Same-sex sexual intercourse was decriminalised in 1932. The age of consent is 15 years for men and women, no matter what their sexual orientation may be. No difference of treatment between sexual offences can be found in penal law depending on whether the perpetrator has the same or a different sex to the victim.

#### Anti-discrimination law

Lesbians and gays are hardly visible in Polish law. Their existence is in no way reflected in any national law or provision that regulates social life. There is no Polish legislative text where one can find the words “sexual orientation”, “homosexuality” or “homosexual”. At the same time, there is also no rule that would ostracise homosexuals or blatantly discriminate against that social group.

Article 32 of the Polish Constitution, which entered into force on 2 April 1997, proclaims the principle of universal equality before the law and bans discrimination “based on whatever reason in political, social and economic life”. Following lobbying from various sexual minorities’ organisations and individuals, the parliamentary committee responsible for drafting the new Constitution proposed a clause on discrimination which included sexual orientation. However, in the text that was finally adopted (in Article 32.2), the grounds on which it is forbidden to discriminate are not specified and no attempt is made to list possible discriminations.

This formulation was the result of combined pressure from conservative social groups, which protested against the proposed clause, and from minority groups, which had suggested it. The Constitution is the only statutory text that mentions discrimination.

In its Articles 118, 119, 256 and 257, the 1997 Penal Code<sup>1</sup> protects the life, health, physical integrity and dignity of people belonging to social minorities. The list of protected groups as found in the Penal Code is closed and includes only national,

ethnic, racial, political, and religious groups, as well as people with certain convictions and beliefs. Other minorities such as people with disabilities or lesbians and gays are not listed, although they would be protected according to Article 32 of the Constitution.

Private persons are protected against damage to their honour and bodily assault (Articles 212 and 216 of the Penal Code), therefore lesbians and gays could go to court on the basis of these provisions. However, it goes without saying that protection relying on individual enforcement is considerably weaker than when the State mobilises its own resources to protect a particular group of people.

Polish legislation allows citizens to have a say in public life and advocate for change. To this end, citizens may set up “associations” and “foundations” (*stowarzyszenia* and *fundacje*). Any person whose constitutional rights have been violated may bring the matter before the Constitutional Court. The latter also rules on the conformity of laws with the Constitution. Everyone has the right to request assistance from an Ombudsman for civil rights. Polish courts and public prosecutors are independent.

Article 58 of the Constitution recognises freedom of assembly. Nevertheless, in 1998 Lambda Warsaw failed to obtain authorisation to organise a public rally in connection with Gay Pride. The Warsaw municipal authorities justified their decision saying that the location chosen for the rally was also “used by mothers with children”.

#### Family law

A major individual right is the protection of private and family life, which is guaranteed by Article 47 of the Constitution. However, there are no provisions in family or civil law that would recognise unmarried couples, whether heterosexual or homosexual. The only form of partnership recognised by the law is marriage, defined by the Constitution in Article 18 as “the union of a woman and a man”.

People engaged in same-sex relationships cannot inherit from each other as two married people

<sup>1</sup> The Penal Code is being revised [November 2000].

would. The current inheritance laws (in force since 1983) define three groups, each of which is taxed in a different way. A homosexual partner is treated as an “other”, i. e. as having no relationship to the deceased, and is thus heavily taxed.

It is important to note that Polish legislation, including family law, does not define what a “family” is. The law on welfare is the only text to specify that a family is to be understood as “people living together and sharing an economical community”.

Family law regulates the adoption of children. Adoptive families have to be “complete” and composed of a mother and a father. In practice, it happens quite often that a single person is accepted as a replacement family and authorised to adopt. Nothing is said in the law about the sexual orientation of adoptive parents. Theoretically, anyone willing to do so can adopt.

The law does not regulate access to artificial insemination.

### Health care law

Anyone who has health benefits as a self-employed person or as an employee has the right to free medical care. The government buys anti-viral drugs and distributes them free of charge through medical centres to HIV positive people. HIV positive people and people with AIDS enjoy free medical care and analyses, which are partly covered by health insurance and partly by the Ministry of Health. HIV positive gays and lesbians have the same right to medical care as anybody else. There is no case known of discrimination against HIV positive gays or lesbians by health care professionals.

At the penal level, the Minister of Justice, Lech Kaczyński, is suggesting, as of November 2000, about one hundred changes to the Penal Code to simplify procedures and strengthen the repression of crime. One proposed measure is to make “deliberate exposure to the danger of HIV infection” punishable by imprisonment for between 3 months and 5 years. The Code of 1969, while being silent on the topic of AIDS/HIV, had a penalty of 3 years for the deliberate transmission of venereal diseases.

### Immigration and asylum law

Refugee status is granted on the basis of the Geneva Convention relating to the Status of Refugees and Polish immigration laws. Persecution motivated by the sexual orientation of the asylum seeker is not specifically mentioned as a ground for granting refugee status. Nonetheless, according to official data, two individuals were granted refugee status due to persecution they had endured as homosexuals, which the relevant authorities accepted as being covered by Article 1(A)(2) of the Geneva Convention (“well-founded fear of being persecuted for reasons of ... membership of a particular social group”).

### The social situation

#### Public opinion

Homosexuality is still perceived in a negative way by Polish public opinion. According to a survey done by OBOP (the official body in charge of public opinion polls) in July 2000, 57% of Polish citizens view lesbians and gays unfavourably and only 27% favourably.<sup>2</sup> However, one can note a positive change in social attitudes as seven years ago only 7% of the respondents indicated a positive attitude towards homosexuals. A higher level of tolerance is found amongst those who have received higher education” and people living in bigger cities.

The image of lesbians and gays is difficult to improve as a result of extensive negative stereotyping, in which the conservatives and the Catholic Church – for whom homosexuality is a form of deviant behaviour – play a major role. Homosexuality is still often equated with paedophilia. Many officials continue to do this in their public pronouncements.

The Polish political scene is divided between the right-wing parties or alliances – AWS (Akcja Wyborcza Solidarność), UPR (Unia Polityki Realnej) and ROP (Ruch Odbudowy Państwa) – which have no problem in saying that they do not accept this kind of “deviance” and the centre and left-wing parties or alliances – UW (Unia Wolności) and SLD (Sojusz Lewicy Demokratycznej, succes-

<sup>2</sup> OBOP (2000): *Social perception of homosexuality*, Warsaw.

sor of the Communist Party) – which show support for proposals to allow the registration of same-sex partnerships.

In January 2000, before the Third World Conference on Gay and Lesbian Culture (held in Warsaw in July), an AWS deputy, Marcin Libicki, sent an open letter to the candidates for the presidency<sup>3</sup> with the following questions: What is your position on legalising so-called homosexual marriages? What do you think about the possibility of homosexual couples adopting children? Two candidates, incumbent President Aleksander Kwaśniewski and the leader of the radical Polish Socialist Party (PPS), Piotr Ikonowicz, expressed their support for partnership legislation and adoption for same-sex couples. The 11 other candidates were against or did not reply. Andrzej Olechowski, the candidate representing liberal intelligentsia and the business world, felt that there was no need to debate the issue publicly. Ironically, this initiative of Marcin Libicki, homophobic in essence, provoked the first ever public debate in Poland about the rights of lesbians and gays.

### The media

In the last ten years, perceptions and attitudes within the Polish mass media have changed significantly. Only a few Catholic or conservative newspapers like *Nasz Dziennik*, *Życie*, *Najwyższy Czas* and the TV show *Fronda* express negative views about homosexuals. Other media sources depict lesbians and gay men as ordinary people and help to disseminate tolerance and acceptance, despite instances of incompetence, bias and, sometimes, hostility by journalists. The work of the media has had a great educational value in opening a debate in Polish society on homosexuality.

### Church and religion

The Catholic Church is totally hostile to lesbians and gays and, as around 90% of Polish citizens are Catholic, it is one of the most influential institutions in Poland. While the official position of the Church, like the position of the Pope, is that homosexuals should be accepted in the name of compassion, but not homosexual behaviour, most priests still express a total rejection of gays and lesbians.

Indeed, the Polish Primate Józef Glemp has repeatedly stated that homosexuality is a deviant behaviour and that gays and lesbians should be cured.

In 1998, activists of the Warsaw Ecumenical Group of Lesbians and Gays approached the church authorities, requesting them to designate a pastor for the lesbian and gay community. The request was rejected on the basis that “gays and lesbians do not need a special pastor”. One could object to this given that artists, policemen, soldiers, scouts, doctors and prisoners already have a pastor. Why not the lesbian and gay community?

### Education

Even if perhaps less frequent than in the past, discrimination still occurs in the workplace and in schools. Numerous examples are documented in a report on Discrimination on the basis of Sexual Orientation in Poland, produced by Lambda Warsaw in 1994<sup>4</sup>.

A reform of the Polish education system was launched in 1999 and a topic entitled “Education in family life” was introduced in the curriculum at the *gimnazjum* level (students aged between 13 and 15). In this context, issues such as the “formation of a positive attitude towards sexuality” and “fears of being homosexual or real homosexual inclinations”, and ways of “helping young people with sexual identification problems” are to be addressed. The curriculum for pupils between 16 and 19 now includes the same headings, as well as the “need to accept one’s own sexuality”. The Minister of National Education has approved several manuals on the topic. In some of them, one can read that homosexuality is a deviance and can be cured; Lambda Warsaw protested, but to no avail. The choice of the manual is left to the teacher and his/her views. It is a mandatory topic in all schools, but there is a shortage of teachers able to cover it, which means that not all young people benefit from this teaching. There is no data available on how many teachers decide to give positive or negative teaching about homosexuality.

<sup>3</sup> Presidential elections were held on 8 October 2000; Aleksander Kwaśniewski (UW) was re-elected.

<sup>4</sup> Association Lambda Warsaw (1995) “Report on Discrimination on the Basis of Sexual Orientation in Poland in 1994”.

## The police

Since 1985, some social changes can be observed, amongst which is an increasing tolerance of lesbians and gays, in particular in the behaviour of the Polish police.

1985 was the year of operation "Hyacinth". Pretending to collect information about gay men in connection with crime prevention, the police established files which came to include about 15,000 names. That operation must also be seen in the context of the period (1984-1985), when opposition groups were closely watched by the State security organs. Homosexuality served as a means to blackmail members of the opposition and to induce them to co-operate with the political police. It seems however that those files have not yet been destroyed, since the police have not answered queries from Lambda Warsaw about their fate.

In more recent years, the police have shown greater tolerance, reflected in the fact that lesbians and gays who are victims of violent crimes receive more comprehensive assistance and better treatment. In Warsaw, the police now patrol cruising areas, resulting in greater safety for gay men.

## The military

All men between 18 and 29 must serve in the army for one year (six months for higher education graduates). This obligation can be waived only for compelling reasons: poor health or training/service in, for example, the police.

The Ministry of Defence publishes a list of illnesses and grounds on which military duty can be waived. Homosexuality is not included but, in practice, many gay men are discharged on the basis of their homosexuality (although not in bigger cities). A conscript can also be discharged for homosexuality if his sexual orientation results in medical disorders such as neurosis, psychosis or anxiety. A great number of gay men thus try to avoid military service by gaining false sick leave. There are known cases of discrimination in the military because of sexual orientation.<sup>5</sup>

<sup>5</sup> *ibid.*

<sup>6</sup> *ibid.*

## Lesbian and gay organisations

There are still very few places that cater for lesbians and gays in Poland. Currently, one can list four major active lesbian and gay associations. Two of these are self-help organisations: *Lambda Warszawa* and *Lambda Szczecin*, which both have hot-lines, self-help groups, and HIV/AIDS prevention programmes. The other two are a lobbying organisation (ISOMS) and the Lesbian Archives. They are all local organisations and three of them are located in Warsaw. Those who live in small cities or in the countryside, in particular in the eastern and southern regions of the country, have no access to lesbian or gay organisations.

It should also be noted that the number of lesbian and gay organisations went down from fourteen in 1992 to five in 1999. However, there are currently twenty-three clubs servicing the lesbian and gay community (for details see appendix 2), i. e. more than one in every provincial capital. New clubs are constantly opening and the quality of the services they offer is increasing.

Five lesbian and gay magazines appear every month and can be bought in regular newspaper kiosks: three information publications (*Gejzer*, *Inaczej* and *Facet*) and two erotic publications (*Nowy Men* and *Adam*).

Organisations which advocate human rights, such as Amnesty International and the Helsinki Foundation, openly support lesbian and gay rights.

The report prepared by Lambda Warsaw in 1994<sup>6</sup> provided an overview of discrimination in Poland and included information about the treatment of homosexuality in various European laws. Although it has not been updated since, this report is still a reference point for those who want to know more about discrimination against lesbians and gays in Poland.

Since 1998, an award called the "Tęczowy Laur" (the Rainbow Laurel) has been given each year to people who have distinguished themselves in the lesbian and gay movement or in work with HIV positive people. For the last three years, there has also been a *Mr Gay Poland* contest and a Drag Queen contest.

In 1998 was also the first Gay Pride, to which lesbians and gays from all over Poland come. It is an opportunity to have fun, but also to discuss so-called gay culture (movies, theatre, poetry, music and songs). However, it appeared in 1998 that very few people were ready to take part in a street rally, and gay pride celebrations are therefore organised in gay clubs. In 2000, Gay Pride was held with the Third World Conference on Lesbian and Gay Culture, in co-operation with the International Lesbian and Gay Cultural Network. The Conference discussed lesbian and gay culture in post-communist countries. The Rainbow Laurel award ceremony, the Drag Queen contest and the Mr. Gay Poland contest were held by Pink Press (the publisher of the magazines *Nowy Men* and *Gejzer*) with the support of Lambda Warsaw.

One can see an increasing number of books being published on topics of interest to lesbians and gays, and TV shows give wide publicity to films with a lesbian or gay theme, as well as books where certain aspects of homosexuality are tackled. Although these programmes entail a positive image of lesbians and gays, they are broadcast late at night and thus only seen by a small number of people.

There is no planned co-operation between lesbian and gay organisations and the government. Organisations like Lambda Warsaw have experienced their applications for grants being rejected several times, because their projects were not found sufficiently “interesting” by the authorities to be eligible. In the opinion of the commission in charge of project selection, lesbians and gays do not need any particular attention or guidance.

## Conclusion

Poland is a member of the Council of Europe and the United Nations. Despite recommendations from the Council of Europe to promote tolerance and to promulgate legislation banning discrimination based on sexual orientation, the Polish government has not taken any such steps.

In 2000, at the Special Session of the UN General Assembly on Women<sup>7</sup> held in New York, the Polish delegation voted against the insertion in the final document of a provision banning discrimination based on sexual orientation. The head of the

delegation, Mr Kropiwnicki (Minister of local development and planning – quite remote from women’s issues), justified this position by his repulsion towards perversion. Once back in Poland, he used as an excuse the fact that the amendment had not been circulated before the conference and that he did not have any instructions from the Polish government on what position to adopt.

**Michał Pawłęga,**  
*Lambda Warszawa*

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<sup>7</sup> Beijing+5, the follow-up to the UN Conference on Women held in Beijing in 1995.

## Chapter 10: Romania

### Description of the legal situation

#### Criminal law

Gays, lesbians and bisexuals are discriminated against by law in today's Romania. The law criminalises the identity of homosexuals, as well as homosexual relationships and organisations.

Article 200 of the Penal Code reads:

1. Same-sex sexual acts taking place in public or resulting in a public scandal, shall be punished by one to five years imprisonment.
2. The act of an adult having sex with a minor of the same sex shall be punished by two to seven years imprisonment and the denial of certain rights.
3. Same-sex sexual acts committed under duress or against a person unable to defend him/herself or to express his/her will, shall be punished with three to ten years imprisonment and the denial of certain rights.
4. If the acts provided for in paragraphs two or three result in serious injury to the victim's bodily integrity or health, the penalty is five to fifteen years imprisonment and the denial

of certain rights. If they result in the victim's death or suicide, the penalty is fifteen to twenty-five years imprisonment and the denial of certain rights.

5. Enticing or seducing a person to practice same-sex sexual acts, as well as propaganda, association or other forms of proselytising with the same aim shall be punished by one to five years imprisonment.

The phrase "public scandal" is not defined anywhere in law, whilst "in public" has a vague definition that can cover almost anything.<sup>1</sup> Article 200 denies gay and lesbian people the rights to private life, free expression and free association.

#### *Age of consent*

The age of consent is 18 for engaging in homosexual sexual acts<sup>2</sup> (whether between men or between women). For heterosexual sexual behaviour, the age of consent is 15.<sup>3</sup> Therefore, someone cannot be prosecuted for having consenting sex with a person of the other sex of age over 15, but can be prosecuted for having consenting sex with a person of the same-sex of age between 15 and 18.

#### *Legal regulation of rape*

Sexual acts where consent is absent are punished by Article 197.<sup>4</sup> Punishment of same-sex relations

<sup>1</sup> "In public" is defined in Article 152 of the Penal Code. "The deed is considered to be committed "in public" when committed:  
a) In a place that by its nature or purpose is always accessible to the public, even if no one is present there;  
b) In any other place accessible to the public, if two or more persons are present;  
c) In a place inaccessible to the public, with the intention that the deed be seen or heard and if this consequence occurs before two or more persons;  
d) In a meeting of two or more persons, except for meetings that can be considered family meetings due to the nature of the relationships between the participating persons;  
e) Through any means by which the actor has knowledge that the occurrence may reach the public."

<sup>2</sup> Penal Code, Article 200, paragraph 2.

<sup>3</sup> Penal Code, Article 198, as modified by the Law for the modification and completion of several provisions of the Penal Code, adopted by the Senate on September 25, 2000, and by the Chamber of Deputies on October 3, 2000: "Sexual intercourse of any kind with a person under 15 years of age shall be punished by one to seven years imprisonment. The same punishment applies to sexual intercourse of any kind with persons aged 15 to 18, if the act is perpetrated by the tutor or guardian, or by the person who takes care of or is in charge of the alleged victim; the personal doctor, professor or trainer, availing himself/herself of this position."

<sup>4</sup> Penal Code, Article 197, as modified by the Law for the modification and completion of several provisions of the Penal Code, adopted by the Senate on September 25, 2000 and by the Chamber of Deputies on October 3, 2000. "Sexual intercourse of any kind with another person, by coercion, or by taking advantage of his/her inability to defend or to express his/her will, shall be punished by three to ten years imprisonment."

without consent is provided in paragraphs 3 and 4 of Article 200.

### *Imprisonment of lesbians and gay men*

Hundreds of gay people were imprisoned or held in pre-trial detention in the 1990s. In April 1998, there was nobody in prison solely under Article 200 paragraphs 1 or 5,<sup>5</sup> and since this date there has been no information about any court decision based solely on these two articles. The last person imprisoned under Article 200 paragraph 5 (paragraph 4 at the time) was a lesbian woman, Mariana Cetiner.<sup>6</sup> She was pardoned in respect of the remainder of her sentence by Decree no. 83 of Emil Constantinescu, then President of Romania, on March 18, 2000, having been released from the Aiud Penitentiary on March 25, 1998.<sup>7</sup>

On September 15, 2000, a total of 432 people were in prison<sup>8</sup> under Articles 200 and 201.<sup>9</sup> None of these appears to have been imprisoned solely on paragraphs 1 or 5 of Article 200, but 14 people were in prison in cases involving minors, the age of the minor not being specified in the list provided by the Ministry of Justice, nor violence or the presence or absence of the minor's consent. ACCEPT is endeavouring to find out if among the 14 people there are any who engaged in consenting same-sex relations with young people between 15 and 18; in any such case, if the actions were between persons of the opposite-sex, they would not have been prosecuted.<sup>10</sup>

### *Political trends: attempts to abolish Article 200*

Governments in power since 1996 have taken a more liberal approach to lesbian and gay people, in particular by acknowledging that there is discrimination against them. Draft laws for the repeal of Article 200 were first submitted to the Parliament in 1998.<sup>11</sup> Although, in principle, a majority in the Parliament supports the Government in its legal initiatives, the Chamber of Deputies<sup>12</sup> rejected the first draft law on June 30, 1998, by a margin of five votes.

Another draft law to repeal Article 200 from the Penal Code was submitted by the Government<sup>13</sup> to the Parliament on October 1, 1999, and was passed by the Chamber of Deputies on June 28, 2000.<sup>14</sup>

The Senate has to vote on the same draft law and, at the time of writing, the Senate's Human Rights Committee had given its approval to the draft (February 28, 2001), whilst the Judicial Committee is expected to follow suit by the end of March 2001. At that stage, the draft will proceed to a vote in the plenary session of the Senate.

As a result of the November 2000 elections, the Senate's political fractions consist of the Social Democracy Pole (PDSR) [46.43%], Democrats (PD) [9.29%], Liberals (PNL) [9.29%], the nationalists of the Great Romania Party (PRM) [26.42%], and the Hungarians' Democratic Union (UDMR) [8.57%]. The Hungarian party has always been in favour of abolishing Article 200, and the Liberals drafted the proposal to abolish Article 200 when they were part of the ruling coalition. Although some

<sup>5</sup> Letter to ACCEPT no. 610 of March 12, 1998, by Mircea Criste, General Director the General Division of Prisons (DGP).

<sup>6</sup> Mariana Cetiner was adopted as a prisoner of conscience by Amnesty International.

<sup>7</sup> Letter to ACCEPT by Zoe Petre, First Adviser to President of Romania, April 6, 1998.

<sup>8</sup> Information received by ACCEPT from the Ministry of Justice on September 27, 2000.

<sup>9</sup> Penal Code, Article 201 "Sexual Perversion":

The acts of sexual perversion, if committed in public or resulting in a public scandal, shall be punished with 1 to 5 years in prison.

The provisions in Article 200, paragraphs 2 to 5 shall be enforced accordingly.

The acts of sexual perversion are any unnatural acts related to sex life, other than those stipulated in Article 200.

<sup>10</sup> ACCEPT requested supplementary information from the Minister of Justice, Rodica Stănoiu, letter no. 5/February 6, 2001 and has not received a response at the time of writing.

<sup>11</sup> First draft law by Victor Ciorbea Government, May, 1998.

<sup>12</sup> Romania's Parliament consists of the Senate and the Chamber of Deputies, both chambers having the same responsibilities. A draft law can be submitted by the Government or by members of Parliament to any of the two chambers. The draft law has to be adopted by each chamber and then be promulgated by the President of Romania in order to become law.

<sup>13</sup> Draft law for the harmonization of Penal Code and Penal Procedure Code provisions with Resolution 1123(1997) of the Parliamentary Assembly of the Council of Europe.

<sup>14</sup> Law for the modification of the Penal Code and the Penal Procedure Code.

Democrats have made homophobic statements, many are also in favour of abolishing Article 200. The other parties have not made known any policy on the human rights of lesbians and gays, and the few members who have made public statements about this issue usually emphasised that they were expressing their personal opinions.

The new Government of Adrian Năstase<sup>15</sup> has not made public any policy regarding gay people and Article 200 of the Penal Code. However, the newly appointed Minister of Justice, Rodica Stănoiu, stated, “I may be shocking many, it is my personal view – but in a country like ours, given the [Romanian Orthodox] Church opposition, the discussions that have aroused in this matter, I would support the organisation of a referendum”.<sup>16</sup> The organisation of a referendum on the elimination or maintenance of criminal charges for homosexuals in Romania was a proposal by the Orthodox bishop Bartolomeu Anania, if the public institutions adopted a position against that of the Orthodox Church.<sup>17</sup>

However, Ms Hildegard Carola Puwak, Minister for European Integration, had a different opinion and said that, as a principle, the PDSR government would implement all requirements for accession.<sup>18</sup> In a hearing with the Romanian Senate, Minister Puwak asked the Parliament to “eliminate any discrimination”, including that based on sexual orientation, in order to align Romania’s legislation with EU standards.<sup>19</sup>

Another draft law for the repeal of Article 200, introduced in the Senate by the UDMR Senator György Frunda, was submitted for approval to the Human Rights Committee of the Senate (chaired

by Senator Frunda) on June 8, 2000, from which it received approval on February 6, 2001. From there, the draft law went to the Judicial Committee of the Senate.<sup>20</sup>

The Presidency of Romania was the public institution with which ACCEPT had a frequent dialogue during the mandate of President Emil Constantinescu (November 1996 – November 2000). However, ACCEPT got no response when it tried to obtain his honorary patronage for the Bucharest conference of ILGA-Europe, held in October 2000.

The current President, Ion Iliescu,<sup>21</sup> whilst generally acknowledging the “space for homosexuals” in society, has also invoked the majority’s Christian morals and expressed a fear of proselytising by this group.<sup>22</sup> On the other hand, President Iliescu responded to a letter by MEP Joke Swiebel by assuring her that “the problem of those provisions which now represent a discrimination on the grounds of sexual orientation will be carefully examined by the competent Romanian institutions” and that he himself “as President of Romania shall closely follow the developments in this field” (February 2001).

### Anti-discrimination law

For a country with such clear anti-gay criminal law provisions, the presence of anti-discrimination law is surprising. The Government<sup>23</sup> adopted an “Ordinance On Preventing and Punishing All Forms of Discrimination” in which:

the term “discrimination” shall encompass any difference, exclusion, restriction or preference based on race, nationality, ethnic

<sup>15</sup> Government of the Social Democracy Pole (PDSR), in power since December 2000.

<sup>16</sup> Rodica Stănoiu, Romania’s Minister of Justice, on article 200 in the context of the Penal Code revision - Pro FM Radio, December 21, 2000, Bucharest, [translation from Romanian by ACCEPT].

<sup>17</sup> “Entering EU Up Front”, article by Anca Medrea in “Evenimentul Zilei” Daily, September 14, 2000.

<sup>18</sup> Meeting of Vera Cîmpeanu and Adrian Coman of ACCEPT with Minister for European Integration, February 16, 2001, Bucharest.

<sup>19</sup> Minister for European Integration in the 14 March 2001 hearing with the Economic Committee of the Romanian Senate, in “Puwak, Against Article 200”, Evenimentul Zilei, March 15, 2001.

<sup>20</sup> However, the Legislative Council gave a negative opinion (aviz negativ) on the proposal of Senator Frunda. It commented: “a promotion in parallel of a provision already adopted by a Chamber of the Parliament is counter productive, burdens the agenda of the legislative and is against the need to unify and systemize the legislation”.

<sup>21</sup> Ion Iliescu became President of Romania as a result of the December 10, 2000 elections when he was candidate of the Social Democracy Pole (PDSR). Ion Iliescu was president of Romania also between 1990 and 1996.

<sup>22</sup> Ion Iliescu during an interview with Tele 7 abc TV, “Dan Diaconescu în direct”, October 23, 2000.

<sup>23</sup> Government of Mugur Isărescu, December 1999 – December 2000.

origin, language, religion, social status, beliefs, sex or sexual orientation, association with a disadvantaged category or any other criterion, aiming at or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural field or in any other field of public life.

The provisions of the ordinance are “applicable to all public and private natural or legal entities, as well as to public institutions with competencies in the following fields:

- employment conditions, conditions and criteria for recruitment and selection, criteria for promotion, access to all forms and levels of training, and refresher courses;
- social protection and social security;
- public services or other services;
- access to goods and facilities;
- education;
- enforcement of public peace and order”.<sup>24</sup>

Whilst reflecting the political will of the government, the ordinance has no practical legal consequence, as there have been no implementing regulations of any kind at the time of writing. The European Commission noted that “this initiative is a very positive step – but both further secondary legislation and revised institutional arrangements will be necessary before the provisions contained in the ordinance can be applied. It therefore remains too early to assess the effectiveness of this measure”.<sup>25</sup>

Discrimination against lesbians and gay men in employment is frequent, and many individuals approach ACCEPT in need of legal assistance and information. Two ACCEPT members were fired in 1998 after disclosing their sexual orientation in the media. One was fired from the Ministry of Education, and the other from a news agency, both in Bucharest. Seeking legal remedies by, for example,

filing lawsuits against an employer, has never happened to the knowledge of ACCEPT, both because of the absence of favourable judicial practice, and the fear that the public attention would do more harm than the loss of employment. Moreover, many people work without official employment contracts, so that employers avoid paying taxes on employees’ salaries. The lack of proper employment status makes it a lot more difficult to sue an employer.

### Judicial practice

In the totalitarian communist regime of Nicolae Ceaușescu, the criminal law was used against gay people as a means to discredit them or as a form of blackmail. Many lesbian and gay people were imprisoned and fled Romania. Romania was the only communist country in Europe that worsened the criminal law provisions for same-sex relations, as compared to the pre-communist time. In 1948 the total ban on homosexuality, repealed in 1865 (in Wallachia in 1850), had been reintroduced.<sup>26</sup>

After the foundations of democracy were laid in Romania (December 1989), Article 200 was re-interpreted in various ways, in particular after the inclusion in 1996 of “public scandal” in the first paragraph. A 1998 report found:

Law enforcement officials use subjective grounds when interpreting and applying the phrase. A chief prosecutor told Human Rights Watch that “there are no limitations [to the interpretation of what constitutes public scandal]. The act can come to the awareness of the public by any means. The revelation does not need to be willed or intended”. A police official stated that a homosexual couple could create a “public scandal” just by “making too much noise”. Another chief prosecutor said that “our criterion is the mentality of the community where the deed is committed” – a clear indication that guilt is based on opinion, not factual evidence. Moreover, the authorities can create a “public scandal” by publicising the facts of a given

<sup>24</sup> Romanian Government Ordinance 137/2000, in force since November 1, 2000.

<sup>25</sup> Commission (2000) “2000 Regular Report on Romania’s progress Towards Accession”, COM (2000) 710.

<sup>26</sup> For details see Helmut Graupner, *Sexualität, Jugendschutz und Menschenrechte*, Vol. 2, p. 608ff, Peter Lang: Fft./M. uet. Al. 1997

case. In 1993, for example, a court found a “public scandal” post facto, because of a “feeling of repulsion and revulsion . . . immediately upon the publication of information in the local press”. The law enforcement officials themselves provided the information to the press.<sup>27</sup>

### Homosexuals as victims of police brutality

Homosexuals reportedly have been the victims of police brutality.<sup>28</sup> Gay people rarely file an official complaint against police officials, fearing the disclosure of their sexual orientation through the media and its impact on their families, friends and work colleagues, and because they do not believe there will be a fair resolution of such complaint. However, in recent years, ACCEPT has received many such reports from victims. On January 17, 2001, for the first time in Romania, a gay person broke the silence before the media and accused a non-commissioned police officer of an infringement of the right to private life and of misconduct, and made a complaint to the Bucharest General Police Department, and another complaint to the Military Prosecutor’s Office within the Supreme Court of Justice.<sup>29</sup>

### Partnership law

There is no provision in Romanian law, and no political trend towards adopting any partnership or adoption legislation for same-sex couples. Moreover, these are arguments used by the opponents of the elimination of the anti-gay legislation in order to justify and maintain it.

### Health care law

When disclosing homo/bisexual orientation to a physician, patients often face the physician’s preju-

dice. In 1998, “some medical units required those seeking diagnostic tests for venereal disease to sign prepared forms – even before they received their test results – admitting to having been informed that they suffer from a particular venereal disease and about the prohibitions mentioned in Article 309 of the Penal Code. These forms also refer to a 1953 Decree, which requires that those infected disclose the identity of all their sexual partners. One member of ACCEPT had to sign such a form to take a syphilis test in a medical unit in Bucharest in 1998”.<sup>30</sup>

Article 309 of the Penal Code<sup>31</sup> provides higher punishments for the deliberate transmission of HIV in comparison with other diseases and “gives courts the power and the duty to require infected persons to undergo mandatory medical treatment. Failure to comply with this requirement is in itself a crime, punishable by fine or by three months to one year of imprisonment. Treatment involves mandatory testing for venereal diseases and for HIV, in spite of the generally accepted rule that such testing requires prior consent.”<sup>32</sup>

### Asylum law

Before and after the fall of the communist regime, many Romanians requested and were granted asylum abroad, based on sexual orientation discrimination. The most frequent reason cited was formal or informal harassment by the police. ACCEPT has received numerous requests for information about the legal situation for lesbians and gay men in Romania, both from Romanian asylum seekers, and from foreign diplomatic missions or foreign government agencies for refugees.

There are no known cases of individuals requesting asylum in Romania on the basis of persecution due to sexual orientation in another state.

<sup>27</sup> Monica Macovei and Adrian Coman (1998) “Implications for HIV/AIDS of Laws Affecting Men Who Have Sex with Men in Romania”, *Medicine and Law*, University of Haifa, available at <http://accept.org.ro>

<sup>28</sup> Extract from the US Department of State, 1999 Country Reports on Human Rights Practices – Romania.

<sup>29</sup> “Adrian Georgescu accuses non-commissioned police officer of misconduct and infringement of his right to private life”, in the ACCEPT newsletter “*lgbt@accept*”, February 2001, available at <http://accept.org.ro>

<sup>30</sup> *Idem* 27

<sup>31</sup> Penal Code, Article 309. Paragraph 1 “Transmission of a venereal disease through sexual relations, through sexual relations with persons of the same sex, or through acts of sexual perversion, by a person who knows him/herself to suffer from such a disease, shall be punished by imprisonment for from one to five years.

Paragraph 2: Transmission of AIDS by a person who knows him/herself to suffer from this disease shall be punished by imprisonment for from five to fifteen years.

Paragraph 3: The court shall order the safety measure of mandatory treatment.”

<sup>32</sup> *Idem* 27

## The social situation

### Public opinion

In an opinion poll carried out in November 2000, 86% of respondents chose homosexuals as a group whom they would not like as their neighbours<sup>33</sup> ranking third after alcoholics and former detainees. Six months earlier, another poll revealed 67% for the same question.<sup>34</sup>

There is no VIP openly lesbian, gay, bisexual or transgender in Romania.

For many people in public and private life, the expression of homophobia is both legitimate and respectable – in a manner that would be utterly unacceptable for any other minority. However, more and more openness towards the acceptance of lesbians and gay men can be noticed, especially among young people in Bucharest and other cities.

At the same time, an emerging anti-gay, right-wing movement has become more visible and this organises homophobic actions, such as the posting of “NO, NO, NO to Homosexuality” signs around Bucharest in July and October 2000, also in February 2001.

### The media

The main obstacle to reducing prejudice about homosexuality is the fact that most of the public debates are focused on the morality of gay sex.<sup>35</sup>

Before 1989, homosexuality was a taboo topic for the Romanian media. The situation, however, changed dramatically in the post-communist period, when the issue of homosexuality started to be tackled, at first rarely and rather shyly, then more and more frequently and from different points of view. Lesbians and gay men are caught in a “vicious circle”. The social stigma and the criminal law force them to keep a low public profile. On the other hand, because of the tiny number of persons who publicly reveal a homosexual orientation, the public

generally has not yet had the opportunity to build an informed opinion regarding homosexuality. The media have discovered that their audience likes news related to homosexuality, and journalists’ interest in covering the subject has increased. The media, especially the printed press, makes frequent use of stereotypes when presenting stories related to same-sex relationships, and various myths have emerged.

The myth of integration in the EU and NATO is present in all media coverage of the decriminalisation of same-sex relationships. This type of article promotes the hypothesis according to which it is the only or the most important condition that Romania needs to meet for accession, to the detriment of the Christian-Orthodox principles that apparently guide the social life of the majority of Romanians.

Moreover, media reporting often links homosexuality with issues such as paedophilia and the corruption of minors. The extent to which these separate issues are merged together in media coverage renders it difficult for the general public to identify the fundamental differences between issues relating to homosexuality and questions pertaining to paedophilia.

Another frequent stereotype, brought up to argue in favour of maintaining certain repressive legal provisions against same-sex relationships, is that lesbians and gays are psychologically unbalanced and therefore violent and perverted.<sup>36</sup>

Overall, however, the attitude of journalists is evolving in a positive trend, including various articles of a neutral or even sympathetic tone, together with the increasing visibility of lesbians and gay men in society. TV stations have contributed a lot through the many talk-shows in which gays and lesbians participated.

### The Romanian Orthodox Church

Religious beliefs play an important role in determining the attitude of the majority towards gay and lesbian issues (according to the 1992 census, 99.3%

<sup>33</sup> Public Opinion Barometer, Open Society Foundation, carried out by the Center for Urban and Regional Sociology – CURS, Bucharest, November 2000.

<sup>34</sup> Public Opinion Barometer, Open Society Foundation, carried out by Metro Media Transylvania - MMT, Bucharest, May 2000.

<sup>35</sup> “It would be immoral to legalise homosexual sex” said Emil Popescu, lawyer and member of the Christian Democratic Party (PNȚ-cd); at the time, this was the main party in the centrist coalition government: Reuters, July 1, 2000.

<sup>36</sup> Antonia Crețeanu and Adrian Coman (1998): ‘Homosexuality in the Written Media in Romania’ in Center for Independent Journalism: *Minorities in the Media* (Bucharest), available at <http://accept.org.ro>.

of the population declared themselves religious) and are increasingly used to justify conservative political decisions on the issue.<sup>37</sup> The Orthodox Church has been campaigning aggressively and publicly against same-sex relationships and the repeal of the anti-gay laws, exercising an enormous influence over the members of Parliament, Government, and on the general public. At the same time, public institutions invited the influence of the Orthodox Church, especially between 1996 and 2000, when Christian-Democrats formed the main party in the governing coalition, and few succeeded in bringing into the public debate the argument that Romania is a secular state in which the state must be separate from the Church.

The position of the Orthodox Church is supported by other denominations, such as certain Protestant churches represented in Romania. An anti-gay demonstration by some Protestants and Orthodox believers together was organised in Arad on July 9, 2000. Reverend Dorel Popa who is, at the same time, mayor of Arad, led the demonstration. One church only, the Unitarian Church, stated publicly in this context, that the “Christian religion cannot promote discrimination or hate”.<sup>38</sup>

## Education

No reference to homosexuality is made in the textbooks or in the official curriculum for schools. In general, sexuality issues are avoided, and teachers either lack the knowledge or the will to address the sensitive issue of same-sex relationships in classrooms.

## The military

Homosexuality is not an issue in the recruitment process. Many people try to avoid the mandatory military service. Some gay men have succeeded by invoking their sexual orientation. Others invoke religious arguments – the only reasons accepted as conscientious reasons for taking the alternative civil service.

## The situation of lesbians

Lesbians experience discrimination and disadvantage as women in Romanian society, but as lesbians they are also “subject to the stigma that the general public attaches to homosexuality. (...) In a country where patriarchal values are at the core of the social structure, and men are seen as the sole decision makers, homosexuality among men is more of an issue precisely because it threatens the gendered organisation of priorities”.<sup>39</sup>

## The transsexual community

Three gender reassignment operations have taken place in Romania to date; the first in 1995 and the other two in 1999, all of them free of charge.<sup>40</sup> Gender identity can be changed by court decision, if preceded by a medical approval for the gender reassignment operation.<sup>41</sup> However, one such request was rejected by the Bucharest First District Court<sup>42</sup> on January 29, 2001, although the medical approval had been provided. The transsexual person in that case appealed the decision, but at the time of writing the appeal has not yet been heard. The social integration of (post-operative) transsexual persons is difficult, and public institutions provide no assistance in this respect.

## International responses to the situation of lesbians and gay men in Romania

### The European Union

Article 200 of the Penal Code and the general respect for the human rights of lesbians and gays in Romania have become issues on the agenda of the accession process, especially since the requirement to respect human rights is part of the Copenhagen political criteria for accession to the European Union by the candidate states.<sup>43</sup>

#### *The EU-Romania Association Council*

In the “Position of the EU” (7041/01) on March 19, 2001 points out that the “issue of combating dis-

<sup>37</sup> Ingrid Baciu, Vera Cîmpeanu, and Mona Nicoară (1996): “Romania” in International Gay and Lesbian Human Rights Commission: *Unspoken Rules – Sexual Orientation and Women’s Human Rights*.

<sup>38</sup> Letter by Dr Szabó Árpád, Unitarian bishop, in *Szabadság*, September 15, 2001.

<sup>39</sup> *Idem* 37.

<sup>40</sup> Interview with Rudy Radu, transsexual, January 2001.

<sup>41</sup> Law 119/1996 on civil identity documents, Article 44, letter (i).

<sup>42</sup> File no. 13153/2000, Bucharest 1st District Court, Civil Decision no. 1236.

<sup>43</sup> See further, chapter 14.

crimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation is a prominent element of the political *acquis* in the European Union". The Council added "the European Union encourages Romania to take further steps towards the abolition of article 200 of the Penal Code in order to put an end to this discriminatory regulation".

### *The European Parliament*

In its resolution of September 19, 1996, the European Parliament denounced the intention of the Romanian Parliament to increase the punishment for consenting same-sex relations between adults.<sup>44</sup>

In its resolution on equal rights for gays and lesbians in the EC of September 17, 1998 the European Parliament "demanded the elimination of discrimination and unequal treatment of homosexuals". It also deplored "the refusal of the Romanian Chamber of Deputies on 30 June 1998 to adopt a reform bill presented by the Government to repeal all anti-homosexual legislation provided by Article 200 of the Penal Code", and called on "all applicant countries to repeal all legislation violating the human rights of lesbians and gay men, in particular discriminatory age of consent laws".

In its official position on Romania's application for membership of the European Union, the European Parliament "called for the government to annul all legislation giving rise to prosecution or discrimination on the basis of sexual orientation".<sup>45</sup>

Several members of the European Parliament have expressed their concern for the delay in the plans to abolish Article 200. MEP Lousewies van der Laan considers Romania's accession to the Union conditional on the repeal of Article 200 of the Penal Code.<sup>46</sup> On February 1, 2001, MEP Joke Swiebel wrote a letter to the President of Romania and the leaders of the political groups in the Romanian Senate, urging them to use their influence for the repeal of Article 200 of the Penal Code. She has also published, together with MEPs Lousewies van der

Laan and Michael Cashman, an article in which they made it clear that "voting against the abolition of Romania's Penal Code Article 200 will block Romania's future entry into the European Union".<sup>47</sup>

The Joint EU – Romania Parliamentary Committee adopted at its 11<sup>th</sup> meeting, on February 27, 2001, recommendation 13 which "calls on Romania's Senate to abolish Article 200 of the Penal Code in order to put an end to this discriminatory regulation".

### *The European Commission*

In the 1997 Opinion issued by the Commission on Romania's Application for Membership of the European Union, the Commission noted "as regards equality before the law, homosexuals are exposed to abuses by the vagueness of the term 'public scandal' as applied to homosexual acts by Article 200 of the Penal Code".

The regular reports issued by the Commission on Romania's progress towards accession have reflected the issue of human rights for lesbians and gays. In the 1998 Report, the Commission stated "in July 1998, a comprehensive reform of the Penal Code dealing with issues such as homosexuality, libel, insult and offence to authorities, was rejected by Parliament and sent back to the Government". In the 1999 Report, it notes "the Romanian Penal Code has still to be brought in line with European standards on issues such as homosexuality, libel, insult, offence to authorities, verbal outrage, domestic violence and abuse"; and the 2000 Report reads: "The government has introduced a proposal to decriminalise homosexuality which has been supported by the House of Deputies but has not yet been approved by the Senate."

In the answer given on behalf of the European Commission to the Written Question of MEP Lousewies van der Laan, Mr Günter Verheugen, Commissioner for EU Enlargement said: "The Commission has raised this issue [of Article 200] with the Romanian Government on several occasions and has expressed the opinion that this represents a violation of human rights." He also confirmed that the "Com-

<sup>44</sup> European Parliament Resolution on stiffer penalties for homosexuals in Romania, B4-1057, 1063 and 1081/96, adopted on 19 October 1996.

<sup>45</sup> European Parliament Resolution of December 3, 1998, on Romania's application for membership of the European Union, with a view to the European Council to be held in Vienna (11-12 December 1998) (A4-0428/98).

<sup>46</sup> Written Question E-4142/00 by Lousewies van der Laan to the European Commission.

<sup>47</sup> *Cotidianul* (Bucharest daily), March 13, 2001, under the title "Article 200 will not join EU".

mission is fully committed to ensuring that this condition for accession is respected".<sup>48</sup>

### The Council of Europe

In its 1993 Opinion on Romania's application for membership of the Council of Europe, the Parliamentary Assembly expressed its expectation that Romania would change its law in such a way that Article 200 of the Penal Code would no longer consider homosexual acts in private between consenting adults, a criminal offence.<sup>49</sup>

In its Resolution 1123/97, the Parliamentary Assembly noted that "certain provisions of the Penal Code now in force are unacceptable and seriously imperil the exercise of fundamental freedoms, especially Article 200 on homosexual acts ...", and stated its expectation that within one year Romania would "amend without delay the provisions of the Penal Code".<sup>50</sup>

### The United Nations

In 1993, the UN Human Rights Committee criticised Romania for maintaining discriminatory laws, including sodomy laws that codified discrimination against sexual minorities (CCPR/C/79/Add.30).<sup>51</sup>

### Good Practice – Positive Developments

A coherent lesbian and gay community cannot exist in a country where the rights to free association and free expression in relation to homosexuality are denied by law.<sup>52</sup> However, concerted efforts, together with the support of pressure from abroad, allowed the creation of the Bucharest-based group ACCEPT – an organisation working for LGBT rights.

ACCEPT (Bucharest Acceptance Group) appeared at the end of 1993, and was registered as a (general) human rights organisation in October 1996, with no reference to sexual orientation in its official registration papers. At the time, ACCEPT had to choose between challenging the law in order to register as an openly gay and lesbian organisation, and registering as a general human rights organisation and then growing into a group lobbying for lesbians and gay men, as well as addressing their needs through meetings and services, such as psychological and medical counselling. ACCEPT has since developed as an institution, operating with staff and implementing projects, mainly thanks to the support provided by the Government of the Netherlands and Dutch agencies.<sup>53</sup>

ACCEPT is now playing a central role in the regional development of the lesbian and gay movement, with financial help from the Dutch Government, and in partnership with COC Netherlands and ILGA-Europe. One group has already emerged, called *Attitude!*, it is located in Cluj-Napoca, and obtained its official registration in May 2000.

ACCEPT's efforts to advocate for the rights of gays and lesbians have been acknowledged at the international level by the awarding of the "EGALITE" Prize for 1999 and a nomination from the Green Group in the European Parliament for the 1999 Sacharov Prize.

#### *Relations between gay and lesbian NGOs and public authorities*

In September 1998, ACCEPT was a key actor in setting up a working group at the 1998 Romanian NGO Forum that adopted a resolution asking the Romanian Parliament to abolish Article 200 of the

<sup>48</sup> E-4142/00EN, March 12, 2001.

<sup>49</sup> Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, "Draft opinion on the application for membership to the Council of Europe submitted by Romania", appendix II, AS/Jur (44) 74, Strasbourg 1993.

<sup>50</sup> Parliamentary Assembly of the Council of Europe, Resolution 1123 (1997) on the honouring of obligations and commitments by Romania.

<sup>51</sup> Fact Sheet by the International Lesbian and Gay Human Rights Commission (IGLHRC), April 30, 1999.

<sup>52</sup> Penal Code, Article 200, paragraph 5.

<sup>53</sup> ACCEPT has received funds from many sources, including the Matra Programme of the Dutch Ministry of Foreign Affairs, Co-operating Netherlands Foundations for Central and Eastern Europe, United Nations Development Programme, Embassies of the Netherlands, Finland and Canada, Open Society Institute, Kimeta Society of Toronto, Astraea Lesbian Action Foundation, Heinrich Böll Foundation, International Gay and Lesbian Human Rights Commission, and donations from many individuals.

Penal Code. This was the first time that concerted support for the repeal of the anti-gay law came from within Romania.

There has been progress over the past years in raising awareness outside of Romania, but the attitude of politicians, law enforcement officials and society in Romania still has to change. The repeal of Article 200 is a must, but is only a first step towards assuring the full enjoyment of human rights by lesbians and gay men.

## Recommendations

### *Immediate legal reforms required:*

- (a) The discriminatory legislation against lesbians and gay men has to be repealed. The Senate has to adopt the draft law, already adopted by the Chamber of Deputies, that includes the repeal of Article 200 of the Penal Code;
- (b) The current Government "anti-discrimination" ordinance (137/2000) has to be adopted by the Parliament, in order to ensure full support of a larger political spectrum;
- (c) Procedural rules allowing for speedy and effective administrative and civil remedies in cases of discrimination against LGBT people have to be designed by the government and adopted by the Parliament;
- (d) Judicial practice aimed at protecting lesbians and gay men from discrimination has to be encouraged through measures that should include LGBT cultural sensitivity training for magistrates, and the police. The topic of violence against LGBT needs to be firmly established in the training and in the continuing education of legal actors. This should also be an issue for studies at college and university levels.
- (e) Donor agencies should develop funding programmes available to NGOs and other institutions to increase tolerance of minority groups, including LGBT groups.

### *Medium-term measures*

A national strategy should be designed by the Government, in consultation with civil society and the relevant European Union institutions. This should aim to revise public policies, to combat discrimination based on sexual orientation, to promote equal

opportunities, and to reduce homophobia. Attention also needs to be given to reducing the social effects of the isolation of LGBT persons.

- (a) The Government should make a public commitment to promoting the inclusion and participation of LGBT persons in society, and combating their exclusion.
- (b) Specialised and socio-psychological services should be organised for LGBT and their families by both relevant government agencies and NGOs. In particular, LGBT access to health care information and related services should increase.
- (c) Education programmes and campaigns should be initiated and targeted at politicians, journalists, schools and universities, and the health sector. This should aim to reduce prejudice and increase the acceptance and participation of LGBT persons in society. Gender sensitivity training should be organized for teachers.
- (d) Education programmes to increase acceptance of human diversity (including homo-, bi-, and transgender issues), and aiming at breaking stereotypes, as well as covering sexual and reproductive rights, should be designed and implemented by the Ministry of Education, and the Ministry of Public Health, in joined actions with the active NGOs.
- (e) Programmes aimed at improving community mobilisation and increasing self-confidence amongst LGBT persons should be developed.
- (f) The Ministry of Justice should screen all legislation to eliminate negative references to homosexuality.

### *Long-term measures*

In the long-term (2001-2006), in consultation with civil society and the relevant European Union institutions, the Government should adopt proper (educational) strategies in order to foster the full acceptance and insertion of LGBT persons in society.

**Adrian Coman,**

*ACCEPT*

*Bucharest Acceptance Group*

## Chapter 11: Slovakia

### Description of the legal situation

#### Criminal law

In 1961, Czechoslovakia legalised lesbian and gay sexual relations, but with a discriminatory age of consent. Section 244 of the Penal Code specified the minimum age for same-sex relations as 18 years, as opposed to 15 for heterosexual relations. In July 1990, following the democratic revolution, the age of consent was equalised at 15. Male prostitution was also decriminalised.<sup>1</sup>

#### Anti-discrimination law

There are no anti-discrimination laws to protect gays and lesbians. A constitutional list of human rights and freedoms was accepted by the Czechoslovak Parliament in 1991 (Law 23/1991). Deputy Klára Slámková wanted "sexual orientation" to be added to the list of protected grounds, but this was not approved by the majority of the Parliament.<sup>2</sup>

According to Slovak labour law, discrimination is prohibited, but discrimination on the basis of sexual orientation is not explicitly named. In most cases, other reasons are used to dismiss people. For example, if a teacher comes out, pressure from colleagues or parents may be used to justify dismissal. Education is one of the most conservative sectors. The Slovak government has proposed revisions to the Labour Code in 2001, including provisions on protection against discrimination. However, sexual orientation is not included in the list of grounds on which discrimination will be prohibited. A coalition of lesbian and gay organisations in Slovakia, *Inakost*, has requested the Parliament to amend the proposed changes to the Labour Code to add sexual orientation.<sup>3</sup>

#### Family law

There is no law of any kind on registered partnership for same-sex couples. In 1997 the NGO *Ganymedes* produced a proposal for a same-sex partnership law, but the Slovak government refused

to deal with the issue. In February 2000, the activists of the organisations *Museion* and *Ganymedes*, joined by *Altera* and *HaBiO*, sent the proposal to every parliamentary group, state officials in the parliament and government, the Ministers of Justice, Social Affairs and Family, Internal Affairs, and the President. The reaction was unsatisfactory. The Minister of Internal Affairs refused to support the proposal. The Minister of Social Affairs was willing to support the proposal because the adoption of children was omitted and the position of EU countries was likely to be favourable. The Ministry of Justice will analyse the proposal during the pending re-codification of the Civil Law. Three state officials passed their letters to the Ministry of Justice without giving their opinion. From the few replies the activists received, it is clear that parliamentary deputies are not very willing to deal with the issue in the near future.

Adoption is legally possible for single women, but in practice there are so many married couples waiting for a child that it is unlikely that a single woman would be chosen. Slovak laws do not allow same-sex couples to adopt children as a couple and the proposed law for registered partnership does not include this right.

Artificial insemination is available for single as well as married women.<sup>4</sup>

#### Health care law

We have no knowledge of compulsory medical actions or research designed to alter the sexual orientation of adults. Even in 1996, in the lectures for psychology students, one university teacher said that homosexuality can be treated and homosexuals can be healed.

#### Immigration and asylum law

Persecution on the basis of sexual orientation is not explicitly recognised in law as a ground for granting refugee status. Same-sex partners are not recognised for the purposes of immigration law.

<sup>1</sup> Gay Times, February 1991, p.37-9.

<sup>2</sup> ILGA, World Legal Survey, Slovakia.

<sup>3</sup> Slovak Spectator, 20 March 2001: www.slovakspectator.sk

<sup>4</sup> *Ibid.*

## The social situation

### Public opinion

In Slovakia, the Prime Minister between 1993 and 1998 was Vladimír Mečiar. His government used homosexuality to blackmail inconvenient journalists or to spread rumours about political enemies. The government coalition with the Christian Democrat leader, Ján Čarnogurský, was also not in favour of gay liberation. The most recent coalition is pre-occupied with European integration and problems in the economy.

### The media

Articles about homosexuality are still rare. If they appear, their language is fairly neutral. Nevertheless, with the campaign for registered partnership this issue is discussed more often. The Catholic right, in particular, is leading the fight against this initiative. The leaders of gay and lesbian groups are sporadically writing articles or giving interviews. However, the articles printed mostly only have an informative character and there is no space for presenting positive aspects to a LGBT way of life. At the same time, Slovak people can read articles stating that homosexuality can be healed, many based on the views of the American association NARTH (founded by Kaufman and Nicolosi) which provides lesbian and gay people with “appropriate” psychotherapeutic help.<sup>5</sup>

### Church and religion

Slovakia is a strongly Catholic country. People (including young people) attend church regularly, especially in the countryside. The Church is a very important and influential part of the society. LGBT people living in these communities are mostly living with constant pressure between the law of the Church, the morals of their society and their own needs and honest feelings. Guilt is the most common problem with which they are dealing, as regular readers of the magazine *SOHO Revue* can see. A priest had two pages dedicated solely to answering desperate letters from Slovakia.

In November 1999, the LGBT organisations, *Ganymedes*, *Museion* and *Altera* addressed the President of the Republic requesting to deny support for

an agreement between the Vatican and the Slovak Republic, because of the discriminatory definition of the term “family” in it. The family is defined as based on heterosexual and monogamous marriage, and families based on these marriages are regarded as the basis of a healthy society.

### The police

During the communist regime, the state security force (STB) kept lists of homosexual people who were then blackmailed into establishing contacts with the secret police. These lists were officially destroyed in the early 1990s. We do not know if there are still lists held by the institutions of the health system. While the Mečiar government was in office, the same car remained constantly in front of the only gay bar in Bratislava and many believed that the Information Service was monitoring those visiting the bar.

### Lesbian and gay organisations

Slovak NGOs have perhaps been less active in the past ten years than their colleagues in neighbouring countries. After the split of the federal state, they did not create an umbrella organisation, nor did they establish an official newsletter or magazine. Their activities were not very publicly visible. No public figures appeared in the media regularly and there was no discussion about gay, lesbian, bisexual or transgender issues. Famous gays and lesbians, bisexuals and transsexuals for role models are not present in Slovak society.

The first official association of lesbians and gays registered in Slovakia was *Ganymedes*, which was established immediately after the changes in 1989. In 1992, it organised the 6<sup>th</sup> ILGA regional conference for Eastern and Southeastern Europe and the 9<sup>th</sup> annual conference of the International Lesbian and Gay Youth Organisation (IGLYO). In 1994, it organised the 12<sup>th</sup> European Forum of Christian Gay and Lesbian Groups. There are groups of *Ganymedes* throughout Slovakia: in Handlová, Nitra and Trenčín. It is currently focusing on legal and media activities rather than grass-roots actions.

The oldest NGO for lesbian women only, *Museion*, was registered in 1994. It is dealing with human rights and legal questions as well as starting new

<sup>5</sup> SME, 11 August 1999.

activities by running the first gay and lesbian periodical *Atribút* together with *HaBiO*. The goal of the organisation is to protect the rights of the gay and lesbian community and to support their activities according to paragraphs 12 and 14 of the Constitution. In 1997, two more clubs formed outside Bratislava; one in central Slovakia, called *Museion Stred*, and the other called *Museion-Junior*. Since 2000, *Museion Bratislava* also hosts the Collective of Lesbian Authors which is publishing a quarterly called *Séparé*. Recently, *Museion* has promoted several legislative changes in parliament and campaigned in the media for an increase in tolerance towards sexual and other minorities in society.

A group of young people in Bratislava, the Social and Cultural Association of Gay and Lesbian Youth and Students – *HaBiO* – was founded in November 1997. Young gays and lesbians who were not satisfied with the gay scene in Slovakia decided to build a new association focusing on the real needs and problems of Slovak LGBT youth. Their first step was to open the social and cultural centre for LGBT youth in Bratislava in 1998. The centre provides the following services on a regular basis: a hotline; discussion meetings on various LGBT topics; international youth exchanges with partner organisations from abroad; short study visits and meetings with foreign LGBT activists; the setting-up of a library; and the publication and distribution of information leaflets and brochures.

A separate office has been created at the building of the Slovak children and youth fund (Pražská 11) for co-ordination and administration of the projects of *HaBiO* supported by the European Commission (the “Youth for Europe” programme), the Civil Society Development Foundation (PHARE), the Open Society Foundation and the Netherlands Embassy (MATRA-Kap programme).

At the beginning of 1998, two members of *Museion-Stred* decided to found their own national association, *Altera*. The organisation was officially registered in November 1998, has 17 registered members and is in contact with about 150 lesbians or bisexual women all over Slovakia (and this number is still growing). The group is based in Banská Bystrica and is active in counselling, telephone help-lines and psychological care for women in central Slovakia, as well as social and educational events for the whole country. *Altera* received financial support from “Mama Cash”, the Open Society Fund

and PHARE. As a result, it was able to rent an office and employ a part-time co-ordinator. However, their main problem continues to be a lack of finances and volunteers.

It is interesting that lesbian NGOs have been more active than those of gay men. Slovak lesbians and gay men have not had a magazine of their own, but they could read the monthly *SOHO Revue*. However, this was very Czech and male oriented. Lesbians had the possibility to read several issues of *Listy* published by the lesbian group *Museion Stred* and since 2000 the magazine *Séparé*. Lesbian and bisexual women can only meet in the capital, Bratislava or at organised meetings of *Altera* or *Museion*. There is no contact or information centre where women can turn to for information and help, only the office of *Altera* in Banská Bystrica, which was established in 1999 and its financing for the future is not yet solved. *Museion* in Bratislava has no space for their activities. Many women, especially those in small towns or villages, feel isolated and lonely, not fitting in and not being understood by their surroundings, and often having doubts about themselves.

Many lesbians admit their sexual orientation only to close friends and/or parents but they remain secretive in the workplace and are never publicly visible. Due to this, many of them are also intimidated about joining lesbian organisations or they stay as so-called anonymous members.

After the younger NGOs were established (*HaBiO*, *Altera*) in 1998, the situation seems to be changing. These young people have different attitudes towards society and their sub-society. They act full of confidence and are organising themselves in a much more professional way. However, there are still no groups for bisexual or transgender people. Bisexuals are part of the mixed groups and *Altera*.

There is an initial attempt to start an official regular paper on LGBT issues in Slovakia. Two lesbian papers have previously existed, but they were not available at the news kiosks. As a result of financial, staff and infrastructure shortage, both ceased their activities. There is no radio or TV show about or for LGBT people.

Meeting places: There is only one official gay bar in Košice (Eastern Slovakia). Once a month there is a disco in the suburbs of Bratislava. In Bratislava,

an underground space as a centre for LGBT people with programmes organised by *HaBiO* has recently started.

Gay pride: In 1999, *HaBiO* organised the first open gay film festival in Bratislava. In previous years (1997, 1998), the festival was held, but it was not accessible to the general public. A Gay and Lesbian Pride March is not yet possible because of very low number of LGBT people ready to show themselves publicly as homosexuals.

**Miriam Molnárová**

## Chapter 12: Slovenia

### Description of the legal situation

#### Introduction

Between the world wars, in the period of Yugoslavia's Kingdom, homosexuality was a criminal act under paragraphs 129.b and 206 of the Penal Code, which classified it as a "crime against nature" and sanctioned "each act of the culprit, who sought and found sexual satisfaction with a body of the same-sex". After World War II, when Slovenia became a Republic within the Socialist Federal Republic of Yugoslavia, homosexuality was criminalised under Article 186 of the Yugoslav Penal Code; "unnatural fornication between males" (interpreted as anal intercourse only) was punishable with up to 1 year's imprisonment (initially 2 years, reduced to 1 year in 1959). Article 186 was valid until 1977, when Slovenia enacted its own Penal Code, which did not contain any special offences for homosexual relations anymore. Since then, homosexuality has been decriminalised. The former Socialist Republic of Slovenia Penal Code from 1976 only sanctioned homosexual – as heterosexual – acts connected to violence, persons unable to consent or under the age of 14, as well as abuse of a position of authority and procuring minors (Articles 101-105). As a result of major political changes in the 1980s, Slovenia became an independent state in 1991. After gaining independence, the new Slovene State initially took over the socialist Penal Code. The new one of 1995 made no material amendments to the provisions mentioned (Art. 180-185). Nonetheless, lesbian and gay citizens do not enjoy the same civil and human rights as other citizens.<sup>1</sup>

#### Criminal law

There is an equal age of consent (14) for sexual acts either with persons of the opposite or the same sex. Where the law is infringed, the Penal Code (Art. 183) provides penalties between 6 months and 5 years imprisonment.<sup>2</sup> The Penal Code explicitly mentions homosexual orientation in relation to criminal acts against sexual inviolability. Under Art. 180 of the Penal Code, the rape of a "person of same

or opposite sex" is punishable with imprisonment from 1 to 10 years. Art. 181 penalises sexual violence against a person of the same or opposite sex with 6 months to 10 years imprisonment. Art. 182 penalises the sexual abuse of vulnerable persons of the same or opposite sex with 6 months to 5 years imprisonment. According to Art. 184 the violation of sexual integrity by abuse of a position of authority is punishable with imprisonment of up to 5 years.

#### Anti-discrimination law

Legal protection against discrimination for lesbian and gay people is guaranteed by the Constitution. Article 14 ensures equality before the law and equal human rights for all citizens without discrimination on any ground, including "other personal circumstances". The explanatory text to this article states that the expression "other personal circumstances" also includes the sexual orientation of an individual.<sup>3</sup>

Article 141 of the Penal Code explicitly prohibits discrimination on the ground of sexual orientation. It says: "Who – on the ground of nationality, race, colour, religion, ethnic group, gender, sexual orientation, financial status, birth, education, social status, or any other circumstance – discriminates against someone in any human rights and fundamental freedoms, accepted by international community or stated by the Constitution or by law; or who limits any of these rights or freedoms; or who grants any special rights or privileges on this ground; must be punished with a fine or imprisonment of up to 1 year."

Besides the Constitution and the Penal Code other anti-discrimination provisions are to be found in legislation, e. g. in the area of personal data protection and in pending labour legislation.

The law on the protection of personal data, adopted in 1999, prevents any collection of personal data concerning sexual orientation without the written approval of individual citizens. Art. 3 of this law states: "The holders of personal data banks, lawfully allowed to collect data, may collect personal

<sup>1</sup> For details see Helmut Graupner (1997): *Sexualität, Jugendschutz und Menschenrechte*, Frankfurt/Main: Peter Lang, Vol. 2, p. 443.

<sup>2</sup> Kazenski zakonik, 1995.

<sup>3</sup> Poročevalec No. 30, 1991.

data on ... sexual orientation only if given personal permission from the individual concerned.” Art. 4 states that “... every processing of data in relation to ... sexual behaviour must be specially marked and protected.” Punishment for breaking this law is a fine. Sexual behaviour is mentioned in Art. 8 (protection of personal data) and Art. 23 (limitation of individual rights).<sup>4</sup>

A new law on labour relations, progressing through Parliament, will explicitly forbid discrimination on the basis of sexual orientation. The first paragraph of Art. 6 of this law states: “The employer may not put an applicant for employment ... or a worker into an unequal position on the grounds of race, colour, gender, age, health condition or handicap, religious, political or other conviction, trade union membership, national or social background, family status, financial status, sexual orientation or other personal circumstances”.<sup>5</sup> Punishment for breaking this law is a fine.

Currently, there is widespread discrimination in employment. In the case of direct discrimination, the reasons given to dismiss a person or to obstruct a candidate for a job are directly connected to his/her sexual orientation. Recently, such cases have been common in the hotel trade and tourism professions, especially for people working on temporary contracts or in clandestine employment. Covert discrimination occurs when employers are not open about their homophobic motives and talk about other reasons instead.

The partners of employed gay people are denied benefits otherwise automatically available for the spouses of heterosexual employees. The procedures used for interviewing job candidates are also controversial because of questions concerning marital status, the number of children, etc., which often have the aim of getting information on the applicant's sexual orientation.

In 1998, research was conducted among lesbian and bisexual women attending openly LGBT places in Ljubljana. Among the women interviewed only 24% of them were permanently or temporarily employed. Such a low percentage implies a considerable degree of fear of losing any job, possibly as a result of

the involuntary disclosure of their sexual orientation. Due to this fear, lesbian and bisexual women, after finding employment, usually do not risk homosexual socialising and stop attending clubs and other openly gay places.<sup>6</sup>

Acute problems arise in connection with gay people employed in schools and the educational system, the army, the police, the health service, law firms, management, etc. People in leading positions in politics, the media, show business and other publicly exposed occupations especially fear their sexual orientation being disclosed.

Moreover, the various legal resources for protection against sexual orientation discrimination have not yet been widely used. The reasons for this lie in the low level of information and knowledge about the existing legal protection; the availability of counselling and other forms of assistance; and in the fear of homophobic reactions, which prevents people speaking out and seeking help. Cases of discrimination against gays and lesbians are common, for example at the workplace, in the army, in school, within the family context, etc. but no legal action is (officially) known to have taken place recently. The persistently high level of social intolerance towards homosexuality remains the primary obstacle to using the legal provisions.

An illustrative example is the case of the Slovenian Ombudsman's Office, which has, since its creation, totally ignored the issue of homosexuality. In 1996 the Ombudsman, Ivo Bizjak, declared “homosexuality is a private matter where the state should not interfere in any way”.<sup>7</sup> He did not consider the individual attempts to apply for help; the official position, also expressed in written documents, is that in Slovenia there are “absolutely no problems concerning gay and lesbian people whatsoever”. The Ombudsman's attitude is also to be seen in his official statement that “for the Ombudsman's Office homosexuality is an issue without the slightest prospect of success”.<sup>8</sup> Due to the Ombudsman's non-recognition of problems in the protection of the human rights of gays and lesbians, submitted applications from citizens in this area are regularly rejected, with the result that the statistics of the Ombudsman's Office do not include gay and lesbian cases at all.

<sup>4</sup> Uradni list RS No. 59, 1999.

<sup>5</sup> Poročevalec No. 50, 1997.

<sup>6</sup> Velikonja, 1998.

<sup>7</sup> Greif and Velikonja 1996.

<sup>8</sup> Ombudsman's office, official information, 31. 1. 2000.

This creates a false impression that these problems do not exist. In this regard, the Ombudsman's Office ignores even the European Convention on Human Rights and other ratified international conventions in the field.

## Family law

### *Partnership law*

The law on family affairs from 1976<sup>9</sup> allows only couples of different sex to marry. Art. 3 of this law states that "legal matrimony is a lawful community between a man and a woman ... with the main goal to start a family". Art. 2 defines the family as "the life community of parents and children". Again, Art. 16 sets "two persons of different sex" as a condition for marriage.

Same-sex partnerships are not protected by the law, leading to extensive discrimination against both partners and children living in these communities. In 1997, the Ministry of Labour, Family and Social Affairs decided to start the process of adopting a bill for same-sex partners (after several earlier initiatives for this bill).<sup>10</sup> The Ministry named the expert commission for drafting the bill and also allowed the representatives of the lesbian group ŠKUC-LL and gay group Magnus, after their own requests, to take an active part in the process of drafting the bill.<sup>11</sup>

Since 1998, the bill for registered same-sex partnership has been waiting to enter the national parliament. The bill would introduce the possibility of registration for same-sex couples, including the conditions for starting and dissolving this relationship, with two legal consequences: the right and duty to support partners without income and the regulation of property relations between partners. After the official statement of the Governmental Office for European Affairs, the bill should pass before 2002 at the latest.<sup>12</sup>

Given that same-sex partnerships are legally not protected, their social security and the security of their children are seriously jeopardised. The civil rights, including the right to social security, of LGBT

citizens are not accessible. The social security, health and pension insurance, the right to sick and maternity leave, the parental and other rights, etc. are not available for partners living in same-sex relations. Also, they are without fiscal, social care and other benefits, to which heterosexual spouses of employed persons are entitled. Due to the legal discrimination in the context of partnership law, numerous consequences are visible in related areas.

### *Adoption law*

In Slovenia, the procedure for adoption contains very strict conditions. It is regulated by the law on family affairs<sup>13</sup> which states in Art. 137 that "the adopter may be a person at least 18 years older than the adoptee". Art. 135 of the same law provides that "nobody can be adopted by two persons, unless they are a married couple." This article explicitly prevents unmarried couples, including homosexuals, from adopting as a couple. In 1998 the law experts drafting the bill for registered same-sex partnership tried to prohibit adoption rights for gays and lesbians in the draft bill, but they failed.

Single persons are allowed to adopt a child and in this way adoption is theoretically open to gay and lesbian individuals. Generally, however, single people have very low, if any, prospects of being awarded a child for adoption. Statistically only 10% of couples who apply for adoption and fulfil the required conditions actually get a child. Since the 1980s, several attempts to amend the law in a way to allow adoption by unmarried couples have been unsuccessful.

### *Artificial insemination*

Artificial insemination is an exclusive right for married women, as part of medical treatment for infertility. In 2000, new legislation was adopted, clearly enabling the possibility of artificial insemination for single women. There was an attempt by liberally oriented political parties to introduce provisions making medically-assisted artificial insemination accessible for single women (including disabled and lesbian women), but this was brutally rejected.<sup>14</sup>

<sup>9</sup> Uradni list SRS No. 15, 1976.

<sup>10</sup> Greif, 1997.

<sup>11</sup> Written request from ŠKUC-LL and ŠKUC-Magnus, dated 25. 5. 1997.

<sup>12</sup> Official information from the press conference of Minister for European affairs, Igor Bavčar, 9. 5. 2000.

<sup>13</sup> Uradni list SRS No. 15, 1976.

<sup>14</sup> Poročevalec No. 43, 2000.

## Asylum law

There is a possibility to gain asylum by reason of sexual orientation-based persecution according to the law on asylum, the Geneva Convention (Art. 1A/2) and the European Convention on Human Rights (Art. 3). The Geneva Convention prevents the return of refugees to countries where “their life or freedom is endangered on the basis of race, religion, nationality, membership of a particular social group or political conviction...”.<sup>15</sup> For an individual it is possible to apply for refugee status on the basis of discrimination on the grounds of sexual orientation as a “member of a particular social group” as well as meeting certain other conditions.

As a result of a lack of experience in this field, in 1998 the legal counselling office in Ljubljana advised an asylum seeker, a gay man from an ex-Yugoslav country, that he had no right to asylum. There is also a need for legal counselling services to receive training and information.

There is a regular flow of gay migrants from foreign countries to Slovenia. Some prefer to get married, which enables access to Slovene citizenship.

## The social situation

### Public opinion

Public opinion on homosexuality is negative. According to the main public opinion poll, SJM Research, which is systematically conducted by the Faculty of Social Sciences (University of Ljubljana), it is possible to conclude that the level of social intolerance toward homosexuality is considerable.

The results of SJM research are as follows: in 1992, 42.5% of people questioned stated that they “did not like homosexuals for neighbours”. In 1993, the same answer was given by 61.6%, and in 1998, by 60.3%. One interesting feature is that in 1994 56.2% of the people interviewed admitted to having had no contact (to their knowledge) with homosexuals. The intolerance towards homosexuality is obviously founded on prejudices and not experience.

In 1991, 45.7% of people interviewed declared that “same-sex relations between adults are always bad”. The same answer was given by 51.4% of people in 1993 and 39.2% in 1998. In 1997, 16.9% of respon-

dents agreed with the statement that “homosexuals should be completely prohibited in expressing their sexual orientation”.

### The media

In the 1990s, the Slovenian mass media began to treat homosexuality differently. Although a slow tendency towards less sensational and more accurate reporting is visible, the high degree of insufficient knowledge about homosexuality and the biased attitudes of journalists, loaded with homophobia, are also present. Media analysis from 1998 has shown that the biggest daily *Delo* is one of the strongest sources of systematic intolerance toward LGBT people. Numerous cases of extremely homophobic newspaper articles, TV or radio programmes are known. There is a strong similarity between the anti-feminist dimension in contemporary printed and electronic media and the anti-gay material as well. One of the features of Slovenian media in the last decade is that homosexuality persistently enters the public space through trendy, chic spectacles and scandals, rather than through an articulated political, civil and human rights context.

The media in the period of transition did not recognise the issue of discrimination on the grounds of homosexuality as one of civil equality and human rights. During the period of democratisation for the Slovene state and society, the media failed to develop a framework for neutral journalistic treatment of homosexuality. The most aggressive and incorrect media treatment concerns the question of gay and lesbian parenthood and adoption rights. Consequently, this is also the most unacceptable question in public opinion.

### Church and religion

Slovenia is a country with a strong Roman Catholic tradition. Among all churches and religions it is precisely the Roman Catholic Church which has assumed a right to judge the moral and ethical norms for society. In the last decade it was actively involved in the political and public sphere and openly opposed some fundamental human rights, especially women’s rights (e. g. reproductive rights, abortion, etc.) and as well the rights of homosexuals. Leading Roman Catholic representatives routinely make official and public discriminatory statements. For example, in 1999 Archbishop Franc Rode warned

<sup>15</sup> Uradni list RS No. 61, 1999.

against “perverted sexuality” at an occasion of major religious celebration. The SJM research showed in 1992 that over 60% of respondents shared the opinion that “the church should not discuss the matters of homosexuality”. Lesbian and gay NGOs have tried to establish contacts with the Roman Catholic church and to get an official statement on homosexuality, but so far without success.

### Violence against gays and lesbians

The most obvious case of violence against gay and lesbian people is institutional discrimination – connected to the unequal legal treatment of homosexuals and lesbians. Inequality and the lack of recognition of the civil and human rights of gay people are the basis for discrimination in many walks of everyday life.

Not all cases of police and other violence become public. In 1998/99 the police entered the LGBT bars *Tiffany* and *Monokel* in Ljubljana with strong flashlights and (unlawfully) checked the identification of some activists present; intervention like this is only allowed in cases where there is an established suspicion of criminal acts or offences. As this was not the case, harassment is the only possible explanation. After police repeatedly visited both clubs and intimidated the visitors at the end of 2000, it was officially reported to Amnesty International.

One example of serious institutional violence against gay and lesbian people is the attempt to close down the only LGBT disco club in Slovenia in 1999, with the excuse of financial matters. The club had operated continuously for over ten years, and its owner, the Students’ Organisation of the University of Ljubljana, was only stopped from closing the club by organised protests of LGBT groups, supported by a broad range of civil society.

### Education

The area of education is significantly lacking information with regard to homosexuality on all levels. The ignorance about this issue on the part of teaching staff is evident, and the system of anti-homophobic pedagogic work is not familiar in Slovenia. Actually this is an instance of discrimination against

pupils and students in respect of their right to knowledge and proper information.

In 1999, the Pedagogical Institute conducted systematic research in schools called “Education for a healthy life”, where pupils aged between 14 and 15 were interviewed. This research showed that young people do not receive sufficient information about homosexuality. When the pupils were asked where they received most information about homosexuality, 3.8% answered that they had got this from the biology teacher; 5.8% said from the ethics teacher and 1% from other teachers. In total only 10.6% of school children received such information at school. The same research showed that 9.5% of young people thought that “homosexuality is a disease”.

### Health

Medicine and psychiatry in Slovenia still classify homosexuality as a disease. In the 1990s, cases of the psychiatric treatment of individual persons are known, especially with young people. Fearing negative consequences, these individuals have contacted lesbian and gay organisations, but have never gone public about their ordeal. Homosexuality is regularly termed a “personality disorder” by military doctors and psychiatrists.

Mandatory medical textbooks and student manuals place homosexuality in the chapters of “social pathology” or “deviations and disorder of sexual behaviour”. In a frequently used psychiatry textbook, the author places homosexuality within the context of “unusual sexual behaviour” together with incest, rape and sodomy.<sup>16</sup> Lokar discusses different aspects of homosexuality and states that “its medical treatment is possible only in the form of psychotherapy” but notes that the results are very bad. The same author placed transvestism and transsexuals within “sexual deviation”. In the most recent textbook on psychiatry and homosexuality, transsexuals and transvestism are classified as a “sexual disorder”.<sup>17</sup>

### The military

Slovenia has military conscription for all males once aged 18. Homosexuals and lesbians are not prohib-

<sup>16</sup> Lokar 1978.

<sup>17</sup> Zihlerl, 2000.

ited by law from serving in the army, but there is discrimination in practice. The admission of one's homosexuality is a sufficient reason to delay or dismiss a candidate from obligatory military service. The acceptance of homosexuality as a reason for excusing military service is an example of a discriminatory procedure by leading military personnel and the responsible management in the Ministry of Defence. The same institutions are also responsible for not ensuring the safe living and working environment for all people serving in the military, regardless of sexual orientation and other personal features.

### Lesbian and gay organisations

In Slovenia there are no governmental institutions or other services dealing with issues of homosexuality. It is an acute problem that, despite more than sixteen years of organised gay and lesbian movement, social developments still do not even permit the employment of a single professional to work in this area. Nonetheless, there are four NGOs active on this field: the gay men's group ŠKUC-Magnus (since 1984); the lesbian group ŠKUC-LL (since 1987); the gay and lesbian group *Roza Klub* (since 1990) and the youth LGBT group *Legebitra* (since 1998). All are based in Ljubljana.

### Gay and lesbian culture

After the decriminalisation of homosexuality in 1977 and the appearance of a Slovenian civil rights movement in the 1980s, lesbian and gay culture began to express itself in open, explicit and public literary and art productions. The agents of homoerotic culture were lesbian and gay NGOs. With regard to political activism, gathering information, education, AIDS prevention activities, awareness building among the population etc., gay and lesbian groups were of fundamental importance throughout the 1980s and 1990s.

Today there are two specialised publishers, *Lambda* and *Visibilija*, dealing with exclusively gay and lesbian essays and fiction. Since the 1980s, numerous fanzines, magazines and newspapers appeared (*Roza Viks*, *Gayzine*, *Lesbozine*, *Revolver*, *Pandora*, *Kekec*, *Sestre*). Currently, a lesbian magazine *Lesbo* and the youth GLBT fanzine *Oznanila* are being published. There were also developments in academic research: three issues of a journal dedicated to gay and lesbian studies (*Časopis za kritiko*

*znanosti*) were published in 1995, 1997 and 2000. The co-operation between the University of Ljubljana and lesbian and gay activists is fruitful.

The lesbian group *LL* has a monthly radio program called *Lesbomania* in co-production with the professional students' radio station. The Ljubljana gay and lesbian film festival is already a traditional annual event.

The social life for LGBT people is also developing, but unfortunately only in the capital. Two bars are open, *Tiffany* and *Monokel*, within the *Metelkova* alternative culture centre in Ljubljana.

In comparison with the 1980s, the financial situation for the LGBT movement is much worse today. There is very little political will from the Slovenian State to support cultural, educational, social and other projects. Originally, exclusively gay and lesbian initiatives in AIDS prevention activities went under the cover of State institutions.

Relations between lesbian and gay organisations and the State authorities are not satisfactory. There is actually no interest from the State's side in the activities of these groups. The exception is the Ministry of Labour, Family and Social Affairs and the Governmental Office for Women's Politics (this was at least the situation until June 2000, after which the government changed). Co-operation with political parties is also unsatisfactory, due to their lack of interest in questions on the civil and human rights of lesbians and gays.

There is not much co-ordination between civil society and lesbian and gay NGOs. Co-operation depends on shared areas of interest in particular projects. Lesbian and gay NGOs have developed relatively stable relations with similar organisations such as feminist groups, alternative culture groups, human rights groups and educational institutions at the university level.

### Conclusions

The actual social and political reality in Slovenia does not allow many positive conclusions with regard to LGBT citizens. The most urgent action needed seems to be the legal regulation of same-sex partnerships, because discrimination here is a source of further forms of discrimination in related areas (social, health and pension security, parent-

hood, adoption and custody rights, employment rights and benefits, property relations, status of a kin, etc.). Some vital areas such as the educational system and military service should introduce legal sanctions against discrimination on the ground of sexual orientation.

In terms of future action, we see an urgent need for State-supported professional working places in the LGBT area, similar to those for women and disabled people. One of most urgent cases of discrimination is the denial of the Ombudsman's Office to deal with lesbian and gay human and civil rights.

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## Chapter 13: **Turkey**

### Description of the legal situation

#### Criminal law

Male and female homosexuality is not a criminal offence in Turkey and the age of consent is set equally for all, at 18 for anal and vaginal intercourse (Article 416 of the Turkish Penal Code) and 15 for all other kinds of sexual activity (Articles 414 and 415). There are several provisions of the Penal Code, Articles 419, 547, and 576, which are used against sexual minorities.<sup>1</sup> These articles cover “indecentcy” and “offences against public morality”. The courts and the police use these articles mostly against transgender people and gay men, particularly those who are sex workers.

#### Anti-discrimination law

There are no anti-discrimination laws except section 10 (1) of the Turkish Constitution: “Everyone, regardless of his/her language, race, colour, sex, political thoughts, philosophical beliefs, religious belief or denomination, and any other similar grounds, is equal before the law.”

Juridical practice is the greatest problem in Turkey. Not only it is very rare that any lesbian, gay man, transsexual, transvestite, or bisexual seeks justice from the courts or authorities, but when s/he does, it is unheard of that s/he gets it.

Unemployment, especially hidden unemployment, is high in Turkey, and LGBT people get their fair share of the general unemployment problem of the country. Employers can, and do, discriminate against LGBT people in all areas of employment, but there is no documented evidence available.

#### Family law

There are no provisions in family law for same-sex partnerships. Under Turkish family law, two per-

sons of the same-sex cannot marry. Even though there is no law against it, there is a Court of Appeal (Yarğıtay) ruling, which forbids lesbians having custody of their daughters. There is no ruling for sons.

Adoption is not available to lesbian and gay couples, and there are no known cases. There are no clinics which provide artificial insemination in Turkey. However it is possible for unmarried couples to have a child with or without artificial insemination, and legally register the new-born child in their name.

#### Asylum law

There are no provisions in asylum law for people from other countries persecuted on the grounds of their sexuality, or any known case of such an application.

### The social situation

#### Public opinion

There has never been a public opinion poll to demonstrate the Turkish public’s views of homosexuality. However stereotypes, especially about gay men, do exist. The social structure of Turkish society encourages men and women to socialise separately. This means men and women spending much more time together within their gender divided social groups without much reference to sexuality. Hence, male to male and female to female bonding is very strong. Due to this, it is much easier to hide in the closet in Turkey than in many other countries.

#### The media

The Turkish media has only very recently started to talk about homosexuality as a human rights issue and this is still very rare. However, traditionally the Turkish media is fascinated, especially with transsexuals and gay men, usually as magazine news material.

<sup>1</sup> Article 419: “Whoever acts indecently in public shall be imprisoned for 15 days to 2 months, and whoever so engages in sexual intercourse shall be imprisoned for 6 months to 1 year and in this case a heavy fine shall also be imposed.”

Article 547: “Whoever intemperately or in a shameful manner openly hurts or disturbs another shall be punished by light imprisonment for not more than 15 days or by a light fine.”

Article 576: “Whoever in a lewd manner exposes himself or a private part of his/her body to the public, or through lewd words or songs, or in another manner, violates public decency shall suffer light imprisonment for not more than 1 month or a light fine.”

## Church and religion

The overwhelming majority of Turks are Moslems (over 98%). However for historical reasons, and because Turkey is a secular country, the effect of religion and the religious establishment on homosexuality is not and has not been as negative as in some other Moslem countries. In fact it is fair to say that the Catholic Church and other churches' anti-LGBT campaigns have not happened in Turkey. This may be partly because the LGBT movement is not very visible in Turkey yet.

## Violence against lesbians and gay men

Queer bashing is not common in Turkey, but violence against LGBT people at the hands of the police is common. The transgender community gets more than its fair share of this police brutality. There are many well-known and, in some instances, well documented cases which have never been addressed by the authorities. In the past, even human rights organisations were known to be reluctant to take up this problem. This police violence cannot, however, be divorced from the general problem of the Turkish police seemingly being unaccountable and above the law. Police in Turkey arbitrarily raid gay clubs, maltreat the people in the clubs, arrest transsexuals and shave their heads, and in some cases beat them up in the police vans and stations. Like other police violations of citizens' human rights, there is no possible redress. Complaints are ignored and police officers who are accused of beatings – and sometimes torture – are simply moved to other posts by the authorities.

In some of the well-publicised cases in recent years, when court cases have been started against police officers on torture and abuse of power charges, the officers concerned were able to choose not to turn up to court and hence prolong the case and sometimes make it redundant. There is a parliamentary committee on torture, which has documented many cases of abuse of power and torture. They have visited some police stations and found some torture equipment. Again their findings have not yet produced a single result.

## Health care

There is no universal national health service, and Turkey is not a welfare state. LGBT people are no different from the rest of the inhabitants of Turkey

in that their social welfare and health depends on their financial situation or their status. Turkey is one of the late developers of world nations when it comes to AIDS awareness. Well after many countries started HIV education, the Turkish authorities continued to deny that there is any HIV problem worth addressing in Turkey. There are now some HIV/AIDS organisations in Turkey, but there is still no observable, state sponsored general or targeted HIV/AIDS information provision or education. There are reports of discrimination against HIV positive people, especially at the hands of the medical profession.

Sex education has just started in Turkish schools. This experimental education ignores homosexuality as a life-style and does not include HIV/AIDS awareness information.

## The military

Military service is compulsory in Turkey for every male Turkish citizen over the age of 18. Young Turkish men are expected to complete their military service in 18 months. Every now and then this period is reduced to shorter periods when there is a surplus of available young men. This enables some Turks to avoid a long period of military service by paying a special fee to the government. Historically, all men were expected to do their military service and many gay men did so.

It is not possible to be a conscientious objector in Turkey. Recently, a small but growing number of young and new generation gay men are declaring their sexuality to the army recruitment offices in order to avoid military service. They are promptly sent to military hospitals for examination. Depending on the military health personnel involved, the process which the applicants have to go through is prolonged and usually degrading. After physical examination, in which an anal test is a must, they are usually given a psychological test. It is common practice for these applicants to be asked to provide evidence of their homosexuality. "Evidence" which the army finds satisfactory – and therefore which medical personnel usually advise applicants to provide – is visual. Applicants are expected to provide photos and/or videos showing that another man has penetrated them.

If the military hospital is convinced of the homosexuality of the applicant, he is given a medical

certificate and is exempt from military service. These documents are signed and sealed hospital reports. Contrary to the World Health Organization's guide lines, they all state that the applicant is diagnosed with "homosexuality" or is a "psychosexual deviant". These medical reports satisfy section 17.D/3 of the health regulations of the Turkish Army (TSK Sağlık Yeteneği Yönetmeliğinin 17. Maddesi'nin D/3 fıkrası). This section has the heading "Advanced psychosexual deviance (homosexuality, transsexuality, transvestism)". According to section 17.D/3, to be exempt from military service: "those who can be considered under this section should have their sexual deviance clearly apparent in their entire life and should have these deviances reflected in their feelings and behaviour. It is also necessary to determine, with official papers, that those candidates for military service will create an undesirable situation in the army". This information is then recorded in the state-held ID information of these Turkish citizens, and they can never be government employees. It is also widely believed that there is a centrally held list of people who have been exempted from military service on the grounds of their sexuality which is available to every police station in the country.

### Lesbian and gay organisations

During the last twenty years, there have always been a few courageous individuals who have been out and contributed to LGBT rights in Turkey. Most of these individuals were/are intellectuals and/or were privileged because of fame or money. Some individuals, especially transgender people, did not have any choice but to fight because the closet was not an option for them. There are increasing numbers of lesbian and gay organisations, however they are not strong and there is not sufficient co-ordination between them to have a national voice yet. Overall, there are four established LGBT groups in Turkey and three of them are ILGA members. None of them exist legally, i. e. they are not established as an organisation, charity, society or with any other status which is recognised by the law or authorities.

Lambda Istanbul is the oldest established group in Turkey. It was established in 1993 and is affiliated to ILGA. It is a mixed organisation.

KAOS GL is an Ankara based organisation established in 1994 and produces the only LGBT magazine of Turkey, which is also called KAOS. It is a

mixed organisation and ILGA member: KAOS also has a sister organisation called *Sappho'nun Kızları*, daughters of Sappho. They have also just opened the first LGBT "cultural center" in Turkey, in Ankara. KAOS is an ordinary LGBT magazine and not a pornographic publication. However, the "Committee to Protect Minors from Harmful Publications" of the Prime Minister's Office (T.C. Başbakanlık Küçükleri Muzır Neşriyattan Koruma Kurulu) found at its meeting on 16 February 2000 that KAOS was a harmful magazine for minors. This decision, number 2000/1, file number 06, is interesting because it is probably the only recent reflection of the official thinking on homosexuality of the Turkish Government, coming directly from the Prime Minister's Office.

*Sisters of Venus* is/was the lesbian organisation based in Istanbul and was/is affiliated to ILGA. A few courageous women started to meet July 1994, and at the beginning they were the only hope for many invisible lesbians in Turkey. However recently there has not been any observable activity from this group.

*Gayankara* is the latest of the mixed organisations in Turkey and it was established at the beginning of 2000.

### LGBT culture

Gay and lesbian culture has not yet emerged as a distinct sub-culture in Turkey. There are only a few commercial outlets in the large Turkish cities and only one LGBT publication with a small circulation. The overwhelming majority of public figures who are lesbian and gay are in the closet. Even in the arts world, which is traditionally more LGBT friendly, famous names are afraid of the stigma attached to being out. Two recent cases are pertinent examples. One famous cross-dressing performer interviewed by a tabloid not only denied that he was a homosexual but promptly declared that he "hates homosexuals because they are all liars". Another young performer climbing the steps of fame went into the closet when he arrived in Turkey to pursue a singing career, having been a perfectly out gay man abroad.

We cannot expect any improvement in this area without the creation of the right atmosphere in Turkey. The first steps in creating Turkish public opinion which is at least neutral, if not friendly, are strong

and organised LGBT voices in Turkey and an improvement with respect to the rule of the law.

After the last military intervention (12 September 1980), the military junta, throughout their period in government, forbade transsexuals from performing on stage, even though there is no legal basis for this ban. This resulted in one of the most popular and famous singers of Turkish Classical Music, Bülent Ersoy, not being able to work. He had a sex change but the ban continued. The situation has changed now however; she is able to work and is also married. In Turkey it is compulsory to carry identity cards: men carry state IDs which are blue and women carry state IDs which are pink. It is now legally possible for transgender people to obtain an ID in the appropriate colour for their changed gender identity, and they are then able to use this, for example, as their identity document to get married. In July 1993, there was an attempt to organise the first ever LGBT pride in Istanbul. Many German activists and Turkish activists living in Germany supported this event. Threats were made by fundamentalists against the Turkish organisers and a narrow section of the Turkish press carried inflammatory articles. The Governor of Istanbul intervened and 28 foreign guests were arrested and expelled from Turkey. Three Turkish men were also arrested as the organisers of the event. They were finally released without being prosecuted.

## Conclusions

This report has already outlined the need for stronger and better co-ordinated LGBT organisations. It is also necessary to strengthen the links between other NGOs, institutions and LGBT organisations. There has to be a dialogue between state authorities and LGBT organisations. This is non-existent at the moment. Finally, Turkey needs a massive education campaign directed at civil society on LGBT issues as a human right.

It may also be argued that reform of Articles 419, 547 and 576 of the Turkish Penal Code is desirable. Equal rights legislation should be campaigned for. However, as long as the rule of law is not respected and all citizens are not treated equally, there is no hope for Turkey to become a modern democratic society. Furthermore, LGBT people will continue to get more than their fair share of maltreatment and discrimination, especially at the hands of officials of the state.

Turkey has been trying to be part of Europe for more than 40 years. There are problems from both sides of this so-called partnership. Too much baggage exists both for Europeans and Turks before they can see each other as partners. In the long catalogue of items to be sorted out during the rapprochement process, the differences in the way which the two parties approach social issues like homosexuality have a low priority. Issues of sexuality have not yet been raised between Turkey and the EU or the Council of Europe or any other international institutions in any significant way. Suffice to say that in Europe problems vis-à-vis sexuality have increasingly become issues demanding political attention over the last two decades, while in Turkey they are still unimportant, minor sources of amusement.

## Kürşad Kahramanoğlu

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## Chapter 14: **The European Union – a new source of rights for citizens in the accession countries?**

The enlargement of the European Union (EU) has emerged as one of the most significant challenges currently confronting Europe. The priority attached to this project was reinforced by the decision of the 1999 Helsinki European Council to extend negotiations on accession to a total of 12 states.<sup>1</sup> In addition, the formal recognition of Turkey as a candidate state demonstrates the potential geographic, social, economic and political breadth of the Union in the future.<sup>2</sup> The Nice European Council declared the intention of the Union to be ready to welcome new Member States from the end of 2002, with an expectation that these acceding states will participate in the next European Parliament elections in June 2004.<sup>3</sup> Therefore, the prospect of enlargement is now imminent.

This chapter examines the potential impact of enlargement on lesbians, gay men, bisexuals and transsexuals (LGBT) in the applicant states. Specifically, it will consider what obligations or commitments any acceding states will have to make as regards their treatment of LGBT communities. These fall into broadly two categories. First, those elements of EU law already offering protection from discrimination based on sexual orientation and gender identity, and which all new Member States will have to implement. Second, there are additional accession requirements regarding the overall state of human rights in candidate countries. Before proceeding further though, the chapter will commence with a brief overview of the current position of gender identity and sexual orientation issues in EU law.

### **The European Union and the protection of LGBT people from discrimination**

Whilst debates within the European Union surrounding LGBT rights date back to the early 1980s,<sup>4</sup> the turning point in creating a wider awareness of the relevance of these issues to the Union may be located in the 1994 *Roth report* from the European Parliament.<sup>5</sup> For the first time, this report detailed the wide variety of discriminations faced by lesbians and gay men in the European Union. In response, the Parliament called on the Member States to agree a Recommendation on the abolition of all forms of sexual orientation discrimination.<sup>6</sup> Following this report, groups such as ILGA-Europe and EGALITE<sup>7</sup> began to campaign in favour of amending the founding treaties to introduce specific powers for the EU to adopt legislation against all forms of discrimination, including that based on sexual orientation. This campaign coincided with similar initiatives by other groups fighting against racism, disability discrimination, and age discrimination.<sup>8</sup> The accumulation of pressure on the Member States successfully persuaded the fifteen national governments in favour of an amendment to the founding treaties, which was agreed in the Treaty of Amsterdam. This created a new treaty provision, Article 13 EC Treaty, which stated:

Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the

<sup>1</sup> Par. 10, Helsinki European Council, Presidency conclusions, Press Release Brussels (11-12-1999), Nr. 00300/99. Available at: <http://ue.eu.int/newsroom/index.htm>. Negotiations on accession are now in progress with Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia.

<sup>2</sup> Par. 12, *ibid.*

<sup>3</sup> Par. 6, Nice European Council, Presidency conclusions, Press Release Brussels (8-12-2000), Nr. 400/00.

<sup>4</sup> See further, Bell, M (1998) "Sexual orientation and anti-discrimination policy: the European Community" in Carver, T & Mottier, V (eds.) *The politics of sexuality – identity, gender, citizenship*, London: Routledge/ECPR Studies in European political science.

<sup>5</sup> Report for the Committee on Internal Affairs and Citizens' Rights on Equal Rights for Homosexuals and Lesbians in the European Community, EP Doc. A3-0028/94.

<sup>6</sup> OJ [1994] C 61/40.

<sup>7</sup> *Equality for Gays and Lesbians in the European Institutions*. This is an organisation which represents LGBT individuals who work for the various EU institutions.

<sup>8</sup> For an overview, see Flynn, L (1999) "The implications of Article 13 EC – after Amsterdam, will some forms of discrimination be more equal than others?" *Common Market Law Review* Vol. 36 p. 1127.

Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic, religion or belief, disability, age or sexual orientation.

This provision finally entered into force on 1 May 1999. Significantly, in the intervening period between agreement of the amendment and its full ratification by the fifteen Member States, there were two timely examples of the pressing need for EU law reform.

First, in *Grant v South-West Trains*,<sup>9</sup> the European Court of Justice held that sexual orientation discrimination in employment was not prohibited under existing EU law on gender equality.<sup>10</sup> South-West Trains extended travel concessions to certain relatives of employees, including married and unmarried opposite-sex partners, worth around € 1500 per annum. However, when, in January 1995, Lisa Grant sought to claim the same travel concession in respect of her female partner this was rejected. Whereas travel concessions were available in respect of unmarried partners of the opposite sex, they were not extended to unmarried partners of the same sex. The Court found that when male and female homosexuals were treated equally (however negative this treatment may be) this did not constitute gender discrimination. Furthermore, the Court held “in the present state of law within the Community, stable relationships between two persons of the same sex are not regarded as equivalent to marriages or stable relationships outside marriage between two persons of the opposite sex”.<sup>11</sup>

The decision in *Grant* is even more disappointing in the light of the Court’s decision in *P v S and Cornwall County Council*<sup>12</sup> in 1996. In that case, the individual concerned had been employed by Cornwall County Council as a manager at an educational establishment since April 1991. However, in 1992, *P* informed her employer that she intended

to undergo gender reassignment to change her physical sex from male to female. Subsequently, her employer decided to terminate her employment with effect from 31 December 1992. *P* brought an action arguing that the 1976 Equal Treatment Directive (prohibiting sexual discrimination in employment)<sup>13</sup> also extended to individuals discriminated against for a reason related to gender reassignment. On 30 April 1996, the Court held that Article 5(1)<sup>14</sup> of the directive precluded the dismissal of a transsexual for a reason related to gender reassignment. The significance of this principle should not be under-estimated. It means that EU law on gender equality applies to both discrimination against women or men, and discrimination against transgender people.

The second case concerning sexual orientation discrimination is *D v Council*.<sup>15</sup> Here, a Swedish man challenged the denial by the EU Council (his employer) of family benefits in respect of his male partner. In Sweden, the couple had previously established a registered partnership, under which Swedish law accorded them most of the legal rights attached to marriage. The EU Court of First Instance rejected all the grounds of his application, relying principally on the decision in *Grant*. Therefore, it maintained that there was no breach of fundamental rights as same-sex partnerships were not required to be accorded equal treatment with married couples.<sup>16</sup> *D v Council* is now pending appeal at the Court of Justice,<sup>17</sup> but a change in position would appear to require a revision of the Court’s approach in *Grant*.

If nothing else, the decisions in *Grant* and *D* reinforced the need for urgent action to enhance the rights of lesbians, gay men and bisexuals within EU law. Article 13 EC is important because it provided the necessary legal foundation upon which new legislative proposals could be built. To this end, on 25 November 1999, the European Commission presented its proposals for new EU anti-discrimination legislation. The Commission proposed two new

<sup>9</sup> C-249/96, *Grant v South-West Trains* [1998] ECR I-621.

<sup>10</sup> In particular, former Article 119 EC (now Article 141).

<sup>11</sup> Par. 35.

<sup>12</sup> C-13/94, ECR [1996] I-2143.

<sup>13</sup> OJ [1976] L 39/40.

<sup>14</sup> “Application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex.”

<sup>15</sup> T-264/97, ECR-SC [1999] II-1.

<sup>16</sup> Par. 39.

<sup>17</sup> C-122/99P. The oral hearing was completed on 23 January 2001. Advocate-General Mischo delivered his Opinion on 22 February 2001. The Opinion takes the view that the Court should reject the appeal by *D* and *Sweden* in this case.

directives against discrimination, both of which were adopted during the course of 2000.

First, in July 2000, the Council adopted a directive forbidding discrimination on grounds of racial or ethnic origin in a wide range of areas including employment, education, social protection, health and access to goods and services, including housing.<sup>18</sup> This was complemented in December 2000 by the adoption of a general framework directive on equal treatment in employment. This prohibited discrimination in employment on the grounds of religion or belief, age, disability or sexual orientation.<sup>19</sup>

In addition, the Council adopted "a Decision establishing a Community Action Programme to combat discrimination, 2001-2006".<sup>20</sup> This seeks to combat discrimination on grounds of racial or ethnic origin, religion or belief, age, disability or sexual orientation through non-legislative avenues. In particular, funding will be provided for activities to develop understanding of issues related to discrimination, to promote exchange of information and good practice, and to "disseminate the values and practices underlying the fight against discrimination".<sup>21</sup> Importantly, Article 9 of the Decision specifies that participation in these initiatives will be open to all the candidate states. In total, there is a budget of € 98.4 million for the programme between 2001 and 2006.

In terms of new legal protection against sexual orientation discrimination, the Framework Directive is of most immediate importance. This forbids discrimination based on sexual orientation in all aspects of the employment relationship, including vocational training, as well as in trade unions or professional associations.<sup>22</sup> Direct and indirect discrimination is prohibited, and harassment is in-

cluded in the definition of unlawful discrimination.<sup>23</sup> The victimisation of anyone who makes a complaint is also forbidden.<sup>24</sup> Sanctions for any act of discrimination must be "effective, proportionate and dissuasive".<sup>25</sup> Moreover, any relevant organisation may bring legal proceedings for the enforcement of the obligations in the directive on behalf or in support of an individual complainant, with his or her approval.<sup>26</sup> The directive not only binds existing Member States, but all future Member States upon accession. Member States have been granted a three year period for the transposition of the provisions pertaining to sexual orientation discrimination into national law. Therefore, by 2 December 2003, all the rights conferred by the Framework Directive in respect of sexual orientation discrimination must be fully implemented in the national laws of each Member State. Any applicant state joining the EU after 2 December 2003 will be required to have completed national implementation of the Directive by the date of their formal entry into the European Union. Moreover, after 2 December 2003, any individual in a European Union Member State will be able to rely on those rights in the Directive which are clear, precise and unconditional, even in the absence of national implementing measures.<sup>27</sup>

Having established the overall position of the European Union and sexual orientation discrimination, it is appropriate to turn now to enlargement, commencing with an examination of the mechanism through which enlargement will take place.

### The process of enlargement

Given the significance of the decision, it is surprising how ill-defined the requirements for accession to the Union are in law. Prior to the 1999 Treaty of Amsterdam, the EU Treaty merely stated that "the conditions of admission ... shall be the subject of

<sup>18</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ [2000] L 180/22.

<sup>19</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ [2000] L 303/16.

<sup>20</sup> Council Decision of 27 November 2000 establishing a Community action programme to combat discrimination (2001 to 2006), OJ [2000] L 303/23.

<sup>21</sup> Article 2(c), *ibid.*

<sup>22</sup> Article 3(1), Framework Directive.

<sup>23</sup> Article 2, *ibid.*

<sup>24</sup> Article 11, *ibid.*

<sup>25</sup> Article 17, *ibid.*

<sup>26</sup> Article 9(2), *ibid.*

<sup>27</sup> This is known as the principle of 'direct effect'. See further, Craig, P and de Búrca, G (1998) *EU law – text, cases and materials*, 2<sup>nd</sup> ed., Oxford: Oxford University Press.

<sup>28</sup> Article O, EU Treaty.

an agreement between the Member States and the applicant State".<sup>28</sup> In order to clarify further the requirements for applicants from central and eastern Europe, in 1993 the Copenhagen European Council agreed a more detailed set of criteria for accession. These state that membership requires that the candidate country has achieved:

- "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union;
- the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union".<sup>29</sup>

In addition, the candidate state must also have created "the conditions for its integration through the adjustment of its administrative structures, so that European Community legislation transposed into national legislation is implemented effectively through appropriate administrative and judicial structures."<sup>30</sup> The 1999 Treaty of Amsterdam built further on the Copenhagen criteria, by amending the relevant treaty provisions. As a result, Article 49 EU provides that:

Any European state which respects the principles set out in Article 6 (1) may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.

The conditions of admission and the adjustments to the Treaties on which the Union is founded which such admission entails shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all con-

tracting states in accordance with their respective constitutional requirements.

The most significant innovation in this amendment is the link to Article 6 (1) EU. This provides that "the Union is founded on principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States." Therefore, Article 49 EU requires any acceding state to respect human rights.

#### *Procedures for accession*

Any decision on accession must be approved by a variety of institutions. In particular, Article 49 requires:

- a. a unanimous decision in the Council of Ministers;
- b. a vote in favour by an absolute majority of the members of the European Parliament;
- c. domestic approval by each of the existing Member States (and those wishing to accede).

Indeed, at least eighteen separate decisions are necessary to authorise a single accession. From the standpoint of enforcing human rights obligations, the European Parliament has a well-established record in supporting human rights, including lesbian and gay rights. In September 1998, the Parliament stated that it would not give its consent to the accession of any country that "through its legislation or policies violates the human rights of lesbians and gay men".<sup>31</sup>

Having considered the conditions and procedures for accession, what is the connection to anti-discrimination law? There are two central issues. First, any state wishing to accede to the Union will have to accept the existing body of EU law by incorporating this into its domestic legislation. This collection of law is normally referred to as the "acquis communautaire". Thus, wherever EU law already imposes anti-discrimination requirements, then applicant states' domestic law must be brought into line with these obligations. Second, any state wish-

<sup>29</sup> *Bulletin-EC*, 6-1993.

<sup>30</sup> *ibid.*

<sup>31</sup> Urgency Resolution on equal rights for gays and lesbians in the European Community; adopted 17 September 1998, par. J, B4-0824 & 0852/98, PE 272.005/79.

ing to accede must establish respect for human rights and fundamental freedoms, including protection of minorities. As shall be discussed further, neither the Copenhagen criteria, nor the EU Treaty, attempt to define what is meant by “human rights” or which ‘minorities’ are entitled to protection. Nonetheless, there are grounds to argue that gender identity and sexual orientation issues must also be considered within this requirement. The rest of this chapter will examine both of these requirements in more detail, commencing with the *acquis communautaire*.

### The *acquis communautaire* on gender identity and sexual orientation

The initial focus of the negotiation process is the issue of “screening”.<sup>32</sup> The existing *acquis communautaire* has been divided into a total of thirty-one chapters. For each chapter, a detailed examination is made of each applicant state’s domestic legislation in relation to the existing body of EU law. This permits early identification of issues which will need to be addressed in negotiations. Following screening, negotiations commence where each applicant is examined individually, as the different chapters will present different issues in relation to each of the applicants. Therefore, although all twelve states have now commenced negotiations, these will progress at varying speeds, with no set order for accession.<sup>33</sup> In considering how LGBT issues may arise in this process, it is necessary to identify the existing stock of EU law in this area. The questionable legal foundation prior to 1999 for EU action against sexual orientation discrimination inhibited significant policy development and this is reflected in the limited content of the *acquis*. Nonetheless, there exists a variety of binding and non-binding instruments which deal both directly and indirectly with this issue.

### Binding instruments

The principal binding legal instrument is obviously the Framework Directive adopted in December 2000, the details of which have been outlined above. Interestingly, several applicant states have already taken measures which might initially be regarded as sufficient measures for the transposition of this Directive, including Romania and the Czech Republic.<sup>34</sup> Whilst any initiatives on sexual orientation discrimination are welcome, it should be noted that the Framework Directive is quite specific in its obligations. A general ban on discrimination will not constitute sufficient implementation. On the contrary, states will need to be able to demonstrate that they have dealt adequately with complex issues such as harassment, indirect discrimination and employment in religious organisations. Given that the Directive itself *obliges* states to develop dialogue with relevant non-governmental actors,<sup>35</sup> arguably states should consult groups at the national level representing LGBT persons before introducing implementing legislation.

As already stated, EU law on gender equality can be taken to apply equally to transgender persons following the decisions in *P v S*. Therefore, any discrimination in employment and occupational social security must be forbidden.<sup>36</sup>

No other binding legislative measure deals directly with gender identity or sexual orientation discrimination. However, there are several instruments which may indirectly benefit LGBT persons. For example, the Parental Leave Directive 96/34/EC<sup>37</sup> provides a right to three months unpaid leave on the birth or adoption of a child, and compassionate leave where “urgent family reasons in cases of sickness or accident” make the presence of the worker indispensable. A significant question is whether this will include same-sex partners. For example, will compassionate leave be granted in respect of same-sex part-

<sup>32</sup> A significant amount of information on the progress of the negotiations is available at:

<http://www.europa.eu.int/comm/enlargement/index.htm>.

<sup>33</sup> Helsinki European Council, Presidency conclusions, Press Release Brussels (11-12-1999), Nr. 00300/99. Available at: <http://ue.eu.int/newsroom/index.htm>, 13.12.99. See par. 11.

<sup>34</sup> See the respective chapters in this volume.

<sup>35</sup> Article 14, Framework Directive.

<sup>36</sup> See further on the scope of EU law on gender equality, chapters 4 and 5, Barnard, C (2000) *EC Employment law*, 2 ed., Oxford: Oxford University Press.

<sup>37</sup> OJ [1996] L 145/4, 19.6.96.

ners, or parental leave granted to a same-sex partner upon the birth or adoption of a child by the other partner? It is relevant that the Commission recorded a statement in the minutes of the Council meeting which adopted this directive to the effect that “the directive should be implemented without any discrimination based on race, sex, sexual orientation, colour, religion or national origin”.<sup>38</sup>

Another instance where LGBT persons may benefit is the Personal Data Directive,<sup>39</sup> which guarantees special protection of data relating to one’s “sex life” (Article 8). Arguably, this precludes the keeping of confidential information (without permission) relating to gender identity and sexual orientation by private organisations, including employers.<sup>40</sup>

### *Non-binding instruments*

Non-binding instruments include, for example, recommendations, resolutions and opinions. Whilst compliance with these cannot be judicially enforced, the Court of Justice has recognised that these are nonetheless legal measures and may have legal effects.<sup>41</sup> Moreover, there is some evidence that non-binding measures have been considered to form part of the *acquis communautaire*.<sup>42</sup> The most important non-binding instrument for LGBT persons is the recently adopted EU *Charter of Fundamental Rights*.

The European Union has never had a codified catalogue of fundamental rights. Instead, the Court of Justice has relied on general principles derived from the national constitutions of the Member States and other international human rights instruments.<sup>43</sup> In June 1999, the European Council decided to ad-

dress this gap and established a body composed of national and European parliamentarians to compile a list of fundamental rights recognised by the European Union. This Charter was proclaimed at the meeting of the European Council in Nice in December 2000.<sup>44</sup> However, the question of its legal status has been deferred and this will be revisited in an intergovernmental conference to revise the founding treaties of the European Union in 2004.<sup>45</sup>

In the meantime, the Charter exists as a non-binding document. The European Council Presidency conclusions at Nice welcome the Charter and note that it combines “in a single text the civil, political, economic, social and societal rights hitherto laid down in a variety of international, European or national sources”.<sup>46</sup> As such, it seems highly probable that the Court of Justice will have regard to the Charter’s text when in the future it seeks to interpret fundamental rights in EU law. Therefore, although the Charter is not yet binding, its legal effects may be similar in nature.

The relevance of the Charter to LGBT persons can be found in a number of the rights contained therein – for example, the right to respect for private and family life.<sup>47</sup> However, the most important provision is the right to non-discrimination, which expressly includes sex and sexual orientation as prohibited grounds of discrimination.<sup>48</sup> The Charter does not extend the powers of the European Union, therefore this is a right to non-discrimination *within* existing and future EU law, rather than an independent source of action. For example, a lesbian woman in Poland would not be able to use the Charter to challenge the absence of any registered partnership law for same-sex couples in Poland, even after accession. However, following Poland’s accession she

<sup>38</sup> EU-Council (1996) “Draft Minutes of the 1914th meeting of the Council (Labour and Social Affairs) held in Brussels on 29 March 1996”, 6262/96 LIMITE. Brussels: 23 April 1996. Although, in C-292/89, *R v Immigration Appeal Tribunal ex parte Antonissen* [1991] ECR 745 at 778 the Court held that such declarations have “no legal significance”

<sup>39</sup> Directive 95/46/EC, OJ [1995] L 281/40, 23.11.95..

<sup>40</sup> See further: Clapham, A & Weiler, J (1992) “Human dignity shall be inviolable: the human rights of gays and lesbians in the EC legal order” Collected Courses in the Academy of European Law Vol. III Book 2 Martinus Nijhoff: Dordrecht.

<sup>41</sup> C-322/88, *Grimaldi v Fonds des Maladies Professionnelles* [1989] ECR 4407.

<sup>42</sup> Noll, G & Vedsted-Hansen, J (1999) “Non-communitarians: refugee and asylum policies” in Alston P; Bustelo, M & Heenan, J *The EU and Human Rights*, Oxford: OUP, pp. 375-376.

<sup>43</sup> C-4/73, *Nold v Commission* [1974] ECR 491.

<sup>44</sup> OJ [2000] C 364/1.

<sup>45</sup> Annex IV, Treaty of Nice; Declaration on the future of the Union.

<sup>46</sup> Par. 2, Press Release: Brussels, 8.12.2000 - Nr. 400/00. Available at: <http://ue.eu.int/en/summ.htm>

<sup>47</sup> Article 7.

<sup>48</sup> Article 21(1): “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.”

could, for example, challenge a denial of parental leave in relation to the birth of her partner's child on the basis that this is a right extended by EU law and one which must be applied without discrimination on grounds of sexual orientation.

Another non-binding source of rights for LGBT persons is the resolutions of the European Parliament. The Parliament has regularly called for equal treatment irrespective of sexual orientation in a wide range of areas, normally in its annual report on human rights in the EU. The commitment of the Parliament to lesbian and gay rights in particular has been demonstrated in its resolution on human rights in the European Union of 16 March 2000. This calls on the Member States to enact laws "recognising registered partnerships of persons of the same-sex and assigning them the same rights and obligations as exist for registered partnerships between men and women".<sup>49</sup> Moreover, the Parliament also reaffirms the need for Member States (and applicants) to remove any discrimination in the criminal law or in other aspects of personal and professional life.<sup>50</sup>

The *persuasive* force of non-binding norms should not be under-estimated. In the endeavour to establish their 'European' credentials, applicant states may wish to be perceived as enthusiastically incorporating even non-binding EU instruments. For example, in its decision on the legality of the death penalty, the Lithuanian Constitutional Court makes reference to the opposition of the European Parliament to the death penalty and concludes "an analysis of the documents of the Council of Europe and the European Union shows that the abolition of the death penalty is becoming a universally recognised norm".<sup>51</sup> This demonstrates the potential utility of even non-binding EU legal instruments.

## Human rights and enlargement

The other relevant pre-condition for accession is establishing respect for human rights, including the protection of minorities. The principal difficulty

here is defining exactly what constitutes human rights. This is exacerbated by the absence of any statement of rights in the founding EU treaties. The most relevant reference point is Article 6(2) EU which provides:

the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms ... and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

The emphasis on the rights contained in the European Convention (ECHR) is also reflected in the case-law of the Court of Justice. For example, in *Grant*, when the Court sought to determine whether a fundamental right to equal treatment for same-sex couples existed, its principle point of reference was the existing Convention case-law on the definition of a family.<sup>52</sup> The Convention is particularly appropriate as a source of human rights in the context of enlargement. All applicant states, like all existing EU states, are signatories of the ECHR. Therefore, requiring new EU Member States to respect the rights set out in the Convention goes no further than the obligations the applicant states have already assumed towards the Council of Europe. The following section examines the contribution of the Convention to combating sexual orientation discrimination.

## Sexual orientation and the ECHR

Sexual orientation is not mentioned in any of the provisions of the European Convention on Human Rights. Nonetheless, it has increasingly developed as a source of protection for lesbians, gay men and bisexuals. The relevance of the Convention was first established in a series of cases where the European Court of Human Rights found the total criminalisation of consenting sexual relations between adult men in private to be contrary to the right to respect for private life in Article 8 ECHR.<sup>53</sup> This case-law

<sup>49</sup> par. 57, European Parliament resolution on respect for human rights in the European Union (1998-1999), OJ [2000] C 377/344.

<sup>50</sup> *ibid.*, paras. 58-60.

<sup>51</sup> "Compliance of the death penalty with the Constitution of the Republic of Lithuania", 2/98, 9.12.1998; in Butterworths Human Rights Cases Vol. 6 pp. 283-305. The Constitutional Court concluded the death penalty was not compatible with the Constitution.

<sup>52</sup> C-249/96 [1998] ECR I-621, 647.

<sup>53</sup> Article 8 ECHR states "everyone has the right to respect for his private and family life". The cases concerned are *Dudgeon v UK*; 22.10.81, Series A, No. 45; *Norris v Ireland*; 26.10.88, Series A No. 142; *Modinos v Cyprus*; 22.4.93, Series A No. 259.

was taken a step further in 1997 when the European Commission on Human Rights held that a higher age of consent for male homosexual acts from that for heterosexual acts was discriminatory treatment contrary to Article 14 ECHR in respect of the enjoyment of the right to privacy.<sup>54</sup>

Although the above decisions were of crucial significance, it is only in the most recent case law that the full potential of the ECHR for lesbians, gay men and bisexuals has been revealed. In *Lustig-Prean et al v UK*,<sup>55</sup> the Court of Human Rights had to consider the legality of the UK ban on homosexuals serving in the armed forces. The Human Rights Court held the ban on homosexuals in the military was in breach of Article 8 ECHR. In particular, the Court rejected the UK's justification, which was founded on the negative reactions there would be from other individuals in the military to the presence of lesbians, gays and bisexuals:

... to the extent they represent a predisposed bias on the part of a heterosexual majority against a homosexual minority, these negative attitudes cannot, of themselves, be considered by the Court to amount to sufficient justification for the interferences with the applicants' rights outlined above, any more than similar negative attitudes towards those of a difference race, origin or colour.<sup>56</sup>

The explicit comparison and link drawn between sexual orientation discrimination and other forms of discrimination is a welcome indication from the Court that homophobic discrimination is equally impermissible. Furthermore, the Court held out the prospect for future progress in its case-law:

... the Court cannot overlook the widespread and consistently developing views and asso-

ciated legal changes to the domestic laws of the Contracting States on this issue.<sup>57</sup>

Indeed, three months after its decision in *Lustig-Prean*, the Court delivered another 'land-mark' decision in *Salgueiro da Silva Mouta v Portugal*.<sup>58</sup> The case concerned the denial of child custody to a father on the grounds of his homosexuality. Moreover, the Portuguese Court of Appeal had expressly linked its decision to the fact that the father was living with another man.<sup>59</sup> The Court of Human Rights found an interference with the father's right to family life in Article 8 ECHR and a violation of Article 14 ECHR in respect of sexual orientation.<sup>60</sup> Crucially, the Court confirmed that Article 14 ECHR on non-discrimination was to be interpreted as implicitly including sexual orientation.<sup>61</sup>

### Incorporating human rights principles in the enlargement process

The cumulative effect of the evolving Convention case law is to resolve any lingering doubts that international human rights include lesbian and gay rights. Given that Article 6(2) EU expressly links the Union with respect for the standards in the ECHR, there is now a firm foundation for requiring applicant states to demonstrate that their treatment of lesbians, gay men and bisexuals at least complies with the case-law of the Court of Human Rights. Specifically, it seems clear that any discrimination in the criminal law based on sexual orientation is unlikely to be compatible with Article 8 on the right to respect for private life.<sup>62</sup>

To some extent, this has already been recognised by the Commission in its regular assessment of the applicant states. Since 1997, the Commission publishes an annual report in the autumn on the progress each state is making in preparing for accession. This

<sup>54</sup> *Sutherland v UK*; (1997) 24 European Human Rights Reports – Commission Supplement, CD 22.

<sup>55</sup> *Lustig-Prean and Beckett v UK*, (2000) 29 European Human Rights Reports 548. See also, *Smith and Grady v UK*, 29 European Human Rights Reports 493.

<sup>56</sup> *Lustig-Prean and Beckett v UK*, p. 583.

<sup>57</sup> *Ibid.*, p. 585.

<sup>58</sup> Application No. 33290/96, 21 December 1999. Available at <http://www.echr.coe.int>

<sup>59</sup> *ibid.*, par. 14.

<sup>60</sup> *ibid.*, par. 43.

<sup>61</sup> *ibid.*, par. 28.

<sup>62</sup> See also, *A.D.T. v UK*, Application no. 35765/79, judgment of 31 July 2000. Available at: <http://www.echr.coe.int>

report analyses, *inter alia*, the human rights situation in each applicant state, in the light of the Copenhagen criteria. These reports are then further examined by the European Parliament and the Council. Sexual orientation issues have gradually entered into the content of these reports. For example, in 1997, the Commission opinion on Romania noted that “homosexuals are exposed to abuses by the vagueness of the term ‘public scandal’ as applied to homosexual acts by Article 200 of the Penal Code”.<sup>63</sup> Moreover, in its 1999 report on Romania, the Commission stated that “the Romanian Penal Code has still to be brought in line with European standards on issues such as homosexuality, libel, insult, offence to authorities, verbal outrage, domestic violence and abuse”.<sup>64</sup> Whilst such statements are a welcome recognition that the treatment of lesbians, gay men and bisexuals forms part of the criteria for enlargement, the level of scrutiny applied remains rather general. The 2000 report on Romania notes proposed reforms to the criminal law on homosexuality are still to be adopted, although this does not prevent the Commission from concluding that “Romania continues to respect human rights and freedoms”.<sup>65</sup> More generally, the periodic assessments by the Commission of the applicant states’ compliance with the enlargement criteria fail to devote much attention to the recognised ECHR standards on sexual orientation discrimination. For example, the Commission’s 1999 report on Cyprus made no reference to the treatment of homosexuality in Cypriot law,<sup>66</sup> despite the adoption in the previous year of legal provisions which included an unequal age of consent as well as measures repressing lesbian and gay organisations.<sup>67</sup> On the contrary, the Commission

in fact concluded “Cyprus continues to respect human rights and freedoms”.<sup>68</sup> The 2000 report notes the amendment of these laws to “remove elements which had been objected to by the Council of Europe”.<sup>69</sup> It is telling that the pressure for law reform here is identified as stemming from the Council of Europe and not the European Union.

Indeed, the only institution which has seriously raised sexual orientation issues in the context of enlargement has been the European Parliament. First, in 1998, the Parliament issued a general warning that it would not give its consent to the accession of any country that “through its legislation or policies violates the human rights of lesbians and gay men”.<sup>70</sup> More recently, in March 2000, the Parliament drew specific attention to the treatment of lesbians, gay men and bisexuals by calling on “Bulgaria, Cyprus, Estonia, Hungary, Lithuania and Romania to remove from their penal codes all laws which entail discrimination against lesbians and homosexuals”.<sup>71</sup> It also requested the “Council and Commission to raise the question of discrimination against homosexuals during membership negotiations, where necessary”.<sup>72</sup>

## Gender identity, sexual orientation and accession: a way forward

Fundamentally, there is little will on the part of the existing EU Member States and institutions to make the treatment of LGBT persons an integral part of the enlargement process. This reflects the differences between the current Member States in their national laws. On the one hand, there are states, such

<sup>63</sup> European Commission (1997) “Commission Opinion on Romania’s application for membership of the European Union” COM (97) 2003, 15.7.97; p. 13.

<sup>64</sup> COM (1999) 510

<sup>65</sup> Commission (2000) “Regular report from the Commission on Romania’s progress towards accession” COM (2000) 710, p. 22

<sup>66</sup> Commission (1999) “Regular report from the Commission on Cyprus’ progress towards accession” COM (1999) 502, p. 17.

<sup>67</sup> ILGA-Europe (2000) “Discrimination against lesbian, gay and bisexual persons in Europe”, Brussels: ILGA-Europe, p. 6. See further, chapter 2 on Cyprus.

<sup>68</sup> COM (1999) 502, p. 10.

<sup>69</sup> Commission (2000) “Regular report from the Commission on Cyprus’s progress towards accession” COM (2000) 702, p. 15.

<sup>70</sup> par. J, Urgency Resolution on equal rights for gays and lesbians in the European Community; adopted 17 September 1998, B4-0824 & 0852/98, PE 272.005/79.

<sup>71</sup> par. 76, European Parliament resolution on respect for human rights in the European Union (1998-1999), OJ [2000] C 377/344, 16 March 2000.

<sup>72</sup> par. 28, Resolution on the annual report on international human rights and European Union human rights policy (1999), OJ [2000] C 377/336.

as the Netherlands, Denmark and Sweden, where sexual orientation discrimination is unlawful and there is the legal recognition of same-sex couples. On the other, there are states such as Austria, Greece and the UK, where there is very weak protection against discrimination coupled with the maintenance of discriminatory criminal laws. It is difficult for the European Union to put real pressure on the applicant states to improve their treatment of LGBT persons when the legal situation in some of the existing Member States is comparable, if not worse, to that in some of the applicant states. Whilst recognising this point, it is essential that this does not become an alibi for inaction. Instead, enlargement should be regarded as an opportunity for both current and applicant states to re-examine the treatment of LGBT persons in their national legal systems.

The approach which has been adopted so far in respect of sexual orientation seems to rely on the Council of Europe mechanisms to ensure the removal of the most serious forms of discrimination. However, this is insufficient, not least because of the less effective implementation mechanisms in that legal framework. Unequal ages of consent were held to be in breach of the Convention in 1997, but four years later many signatories to the Convention have still failed to bring their national legislation into line with this standard.<sup>73</sup> At the very least, the Union could require applicant (and current) states to implement existing Convention case law. Moreover, there is little evidence in the progress reports that the treatment of transgender persons in the applicant states has been examined. This is an obvious gap given the existing provisions of EU law which already apply to discrimination based on gender identity.

Above all, if the European Union is to have an impact in this area, there is a need for more clarity. Specifically, more information is required on the situation, in law and in fact, for LGBT persons in each of the applicant states. This report provides an important contribution in that regard. Building on

the information provided here, the legal and social situation of LGBT persons needs to become an integrated aspect of the enlargement negotiations. For example, this will require more detailed analysis by the Commission in their periodic reports of these issues. Another valuable instrument would be an official communication on gender identity, sexual orientation and enlargement. A precedent can be found in the Commission's 1999 report on combating racism in the candidate countries.<sup>74</sup> This clarified that combating racism forms part of the human rights condition for accession.<sup>75</sup> A communication on gender identity, sexual orientation and enlargement could help to specify the minimum standards the Union requires of applicants in their treatment of LGBT persons.

Verhoeven notes that "concepts of democracy and human rights are closely linked to a society's particular identity and are value-laden and sensitive".<sup>76</sup> Undoubtedly, homosexuality and transsexuality are issues with the potential to provoke strong differences of opinion both within the existing EU states and also between the EU and the applicant states. Nonetheless, simply because it is more difficult to find agreement should not mean that these issues are left off the agenda. The Charter of Fundamental Rights provides a clear lead in signalling that sexual orientation discrimination is as unacceptable as any other form of discrimination – a view increasingly supported in the decisions of the European Court of Human Rights. Both the existing and the future Member States have some distance to travel before that principle is realised in their national laws and policies. The enlargement process is an ideal opportunity for a dialogue to start on how the equality principle can be secured across Europe and across all types of discrimination.

**Mark Bell,**  
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<sup>73</sup> See further, ILGA-Europe (2000) "Discrimination against lesbian, gay and bisexual persons in Europe", Brussels: ILGA-Europe, appendix 1.

<sup>74</sup> Commission (1999) "Countering racism, xenophobia and anti-semitism in the candidate countries" COM (1999) 256, 26.5.99.

<sup>75</sup> *ibid.*, p. 2.

<sup>76</sup> Verhoeven, A (1998) "How democratic need European Union members be? Some thoughts after Amsterdam" *European Law Review* Vol. 23 pp. 217-234, 228.

## Appendix 1: **More Information on the EU**

### Some important Treaty dates:

- 1952: European Coal and Steel Community (ECSC)
- 1958: European Atomic Energy Community (Euratom)
- 1958: European Economic Community (EEC) – Treaty of Rome
- 1987: The Single European Act
- 1993: The European Union (EU) – Treaty of Maastricht
- 1999: Treaty of Amsterdam
- 2000: Treaty of Nice (not in force yet)

The Treaty of Maastricht established the European Union. The Treaty of Amsterdam amended both the Treaty on European Union and the Treaty establishing the European Community.

### Member States

15 Member States since 1995:

- 1958: Belgium, France, Germany, Italy, Luxembourg, Netherlands
- 1973: Denmark, Ireland, United Kingdom
- 1981: Greece
- 1986: Portugal, Spain
- 1995: Austria, Finland, Sweden

### Applicant states and date of application

Turkey:	14.04.1987
Cyprus:	03.07.1990
Malta:	16.07.1990
Hungary:	31.03.1994
Poland:	05.04.1994
Romania:	22.06.1995
Slovakia:	27.06.1995
Latvia:	13.10.1995
Estonia:	24.11.1995
Lithuania:	08.12.1995
Bulgaria:	14.12.1995
Czech Rep.:	17.01.1996
Slovenia:	10.06.1996

More information available at:  
<http://www.europa.eu.int/comm/enlargement/index.htm>

### The Three Pillars

Since the Treaty of Maastricht, the Union is based on three “pillars”:

**1<sup>st</sup> Pillar:** the European Community based on the Treaty of Rome and subsequent amendments, which provides for a common market based on the free movement of goods, persons, capitals and services, an economic and monetary union and common policies and activities.

Since the Treaty of Amsterdam it includes visas, asylum, immigration, judicial co-operation in civil matters.

**2<sup>nd</sup> Pillar:** Common Foreign and Security Policy, based on the Treaty on European Union.

**3<sup>rd</sup> Pillar:** Police and Judicial Co-operation in Criminal Matters, based on the Treaty on European Union.

### The institutions

[The European Council = heads of states and governments]

The Council of the European Union  
<http://ue.eu.int/index.htm>

The European Commission  
<http://www.europa.eu.int/>

The European Parliament  
<http://www.europarl.eu.int/>

The European Court of Justice  
<http://curia.eu.int/>

The Court of Auditors  
<http://www.eca.eu.int/>

The Economic and Social Committee  
<http://www.ces.eu.int/>

The Committee of the Regions  
<http://www.cor.eu.int/>

The European Ombudsman  
<http://www.euro-ombudsman.eu.int/>

## The European Parliament

The European Parliament is the assembly of the elected representatives of the 370 million Union citizens. There are 626 Members of the European Parliament (MEPs) distributed between Member States by reference to their population.

The Parliament's main functions are as follows:

- it considers the Commission's proposals and is associated with the Council in the legislative process by means of various procedures (co-decision, co-operation, consultation, etc.);
- it has the power of supervision over the Union's activities through its confirmation of the appointment of the Commission (and the right to censure it) and through the written and oral questions it can put to the Commission and the Council;
- it shares budgetary powers with the Council in voting on the annual budget and overseeing its implementation.

It also appoints an Ombudsman empowered to receive complaints from Union citizens concerning mismanagement in the activities of the Community institutions or bodies. Finally, it can set up temporary committees of inquiry, whose powers are not confined to examining the actions of the Community institutions but may also relate to actions by Member States in implementing Community policies.

Much of the work of the Parliament is done in its committees, which prepare reports on legislative proposals from the Commission and present them for debate by the full Parliament. Committees can also draw up reports on their own initiative.

## The Council of the European Union

The Council of the Union (the Council, sometimes referred to as the Council of Ministers) is the Union's main decision-making institution. It consists of the ministers of the fifteen Member States responsible for the matters on the agenda: foreign affairs, agriculture, industry, transport or else. Despite the existence of these different ministerial compositions depending on the matter in hand, the Council is nonetheless a single institution.

Each country in the Union in turn holds the Presidency of the Council for six months. Decisions are prepared by the Committee of Permanent Representatives of the Member States (Coreper), assisted by working groups of national government officials. The Council is assisted by its General Secretariat.

## The European Council

The European Council is the term used to describe the regular meetings of the Heads of State or Government of the Member States. It meets at least twice a year and the President of the European Commission attends as a full member. These meetings are sometimes referred to as European summits.

The Treaty on European Union states that the Council "shall provide the Union with the necessary impetus for its development and shall define the political guidelines thereof" (Article 4).

## The European Commission

The Commission is the European institution with the power of legislative initiative, implementation, management and control of the Community policies, programmes, and initiatives. It is the guardian of the Treaties.

There are twenty Commissioners (two each from France, Germany, Italy, Spain and the United Kingdom and one each from all the other countries) who undertake to act in the interests of the Community as a whole.

The Commission is appointed for a five-year term, by agreement among the Member States, and is subject to a vote of appointment by the Parliament, to which it is answerable, before it can be sworn in.

The Commissioners are assisted by an administration made up of directorates-general (DGs) and specialised departments with responsibility for specified areas of Community policy, located mainly in Brussels.

The Directorate-General for Employment and Social Affairs has the prime responsibility for social policy. It prepares the Commission's Social Action Programmes and publishes action plans, with detailed work plans for the period ahead, on various aspects of policy.

## The Economic and Social Committee

The Economic and Social Committee (ESC) is a consultative assembly made up of representatives of three groups: employers, workers, and “various interests” (e. g., agriculture, consumer protection organisations, science and technology). Its members are appointed by the Council, from nominations by the governments of Member States, for a period of four years.

It must be consulted by the Commission on proposals on a wide range of Community policies. It can also draw up reports on its own initiative.

## The Committee of the Regions

The Committee of the Regions is another consultative body to support the work of the Council and the Commission. It is composed by the representatives of regional and local bodies. They are unanimously appointed for a four-year term by the Council upon proposals of the Member States. They are completely independent in their activities.

## The Court of Justice

The Court of Justice of the European Communities is made up of fifteen judges assisted by nine advocates-general appointed for six years by agreement among the Member States. It has two principal functions: to check whether instruments of the European institutions and of governments are compatible with the Treaties, and, at the request of a national court, to pronounce on the interpretation or the validity of provisions contained in Community law.

The Court is assisted by a Court of First Instance, set up in 1989, which has special responsibility for dealing with administrative disputes in the European institutions and disputes arising from the Community competition rules.

## Other important features

### Types of legislation

There are several types of binding legislation which can be adopted: Regulations, Directives, and Decisions. Regulations have direct effect, they apply in all Member States without the need for national legislation. Directives are binding on the Member

States as to the results to be achieved, but leave the form and method to the discretion of the Member States. They must be implemented into national law in order to generate legal effect. Decisions are legally binding for those to whom they are addressed.

The Parliament, the Council and the Commission can also adopt recommendations and resolutions but these are not binding.

## The co-decision procedure

The co-decision procedure (Article 251 EC) was introduced by the Treaty of Maastricht. It gives Parliament the power to adopt instruments jointly with the Council. In practice, it has strengthened Parliament’s legislative powers in the following fields: the free movement of workers, right of establishment, services, the internal market, education (incentive measures), health (incentive measures), consumer policy, trans-European networks (guidelines), environment (general action programme), culture (incentive measures) and research (framework programme).

In its 1996 report on the scope of the co-decision procedure, the Commission proposed that the procedure be extended to all Community legislative activity.

The Treaty of Amsterdam has simplified the co-decision procedure and extended it to new areas such as social exclusion, public health and the fight against fraud.

The Treaty of Nice, once in force, will extend co-decision to more areas.

## The consultation procedure

Under this procedure the Council must consult the Parliament and take its views into account. However, it is not bound by Parliament’s position but only by the obligation to consult it. This is the procedure that applies to measures based on Article 13.

## The Intergovernmental Conference (IGC)

This is the term used to describe negotiations between the Member States’ governments with a view to amending the Treaties. An IGC is of major importance as regards European integration, where changes in the institutional and legal structure – or simply in the content of the Treaties – have always

been the outcome of intergovernmental conferences (e. g., Single European Act and Treaty on European Union).

The IGC which ended at the Amsterdam European Council on 16 and 17 June 1997 with the adoption of the Treaty of Amsterdam was the sixth in the history of the Community. The last IGC which led to the Treaty of Nice started in early 2000 and ended at the Nice European Council in December 2000.

## The Social Partners

The social partners are employers and trade unions. The general cross industry organisations recognised by the Commission for consultation within the social dialogue process are the ETUC for the trade unions, UNICE and CEEP respectively for the private and public sector employers.

## The Platform of European Social NGOs

The Platform of European Social Non-Governmental Organisations, established in September 1995, now brings together 37 European NGOs, federations and networks, including ILGA-Europe. The Platform seeks to develop and strengthen a civil dialogue between European NGOs and the institutions of the EU.

Member organisations of the Platform work either to address specific social issues (such as social exclusion, poverty, public health or homelessness) or to address the needs of particular groups of people (e. g., disabled people, migrants, unemployed people, and women). They are all actively seeking to contribute towards the building of a stronger and more just society, both in Europe and around the world. Members of the Platform represent thousands of organisations engaged in a wide range of activities at local, regional, national and international level.

## The Council of Europe

The European Union (or its European Council) should not be confused with the Council of Europe, an international organisation based in Strasbourg that comprises today 43 member states. Its main role is to strengthen democracy, human rights and the rule of law throughout its member states. It is also active in enhancing Europe's cultural heritage

in all its diversity, and acts as a forum for examining a whole range of social problems, such as social exclusion, intolerance, the integration of migrants, the threat to private life posed by new technology, and bio-ethical issues.

The Council of Europe has adopted a series of important conventions and charters, notably the European Convention on Human Rights and the European Social Charter, and established a range of authorities and institutional machinery, arising from its international treaties.

## The European Convention on Human Rights

The European Convention on Human Rights signed in Rome on 4 November 1950 established, for the first time, a system of international protection for human rights. It entitles individuals to apply, for the enforcement of their rights, to the European Court of Human Rights based in Strasbourg. This Court should not be confused with the Court of Justice of the European Communities based in Luxembourg.

## Some Frequent Abbreviations and Acronyms

CEEP: European Centre of Public Enterprises  
 DG: Directorate-General  
 EC: European Community  
 ECR: European Court Reports  
 ECJ: European Court of Justice (properly known as the Court of Justice of the European Communities)  
 EMU: Economic and Monetary Union  
 EP: European Parliament  
 ESC: Economic and Social Committee, sometimes known as ECOSOC  
 ETUC: European Trade Union Confederation  
 EU: European Union  
 IGC: Intergovernmental Conference  
 MEP: Member of the European Parliament  
 NGO: Non-governmental organisation  
 OJ: Official Journal of the European Union  
 UNICE: Union of Industrial and Employers' Confederations of Europe

## Appendix 2: Contributors and LGBT groups in the accession countries

Where information on LGBT groups in the accession countries has been supplied by the contributors, this has been included with their biography.

### Bulgaria:

Genko Yordanov Genkov: Graduate of Sofia University (1993) with a Master degree in Bulgarian Philology and Journalism. Has worked mostly in the social sector: Union of the disabled in Bulgaria; National center of social rehabilitation; Bulgarian Youth Red Cross. In 1997 he participated in the creation of Gemini, and since 1999 he is chairman of the organisation's executive board.

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Lesbian section: bgogemini@einet.bg  
<http://www.bgogemini.org>

### Cyprus

Alexander Fotis Modinos was born and grew up in Nicosia, Cyprus. He graduated from the Strathclyde University of Glasgow, Scotland, as Bachelor of Architecture. He works as an architect and is Associate Member of the Royal Institute of British Architects. He began to militate for the human rights of lesbians and gays in 1979 and founded the Gay Liberation Movement of Cyprus in 1987. In 1989, together with other members of the gay movement, Alexander Modinos founded the "AIDS Solidarity Movement" in Cyprus. In 1989 he accused Cyprus before the Council of Europe of violating the European Convention of Human Rights with respect to the human rights of lesbian and gay people. The European Court of Human Rights condemned Cyprus in 1993. He continues to be the key person in challenging anti-gay legislation and practice in Cyprus. His goal is to achieve equality not only in law but also in everyday life.

AKOK (Apeleftherotiko Kinima Omofilofilon Kiprou) – Gay Liberation Movement of Cyprus.  
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### Czech Republic

Miluš Kotišová: free-lance journalist, external lecturer at the Charles University (1995-1999) on the subject of "Homosexuality in the World of Two Greatly Disparate Sexes" within the series called "Social Aspects of Gender". Member of an initiative called "Public Appeal 2002" calling for the government to pass the registered partnership law by 2002. Member of the ILGA-Europe board 1996-1998.

### Estonia

Lilian Kotter: Graduated from Tartu University as a historian in 1981. Degree: Dr. Phil. in 1989. Co-founder of the Estonian Lesbian Union (1990-1999) and of the Estonian Association for Lesbians and Bisexual Women (1998-). Editor of the lesbian newsletter *ELL-Info* and *E.L.B.-Info* (1994-1999).  
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### Hungary

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### Latvia

Juris Ludvigs Lavrikovs: In 1994, graduated from the University of Latvia, Bachelor of Law. In 1997 graduated from the University of Exeter, United Kingdom, LL.M in European Legal Studies. Dissertation "How homosexuals can fight discrimination on the basis of Community law". 1990-1996

co-founder and board member of the Latvian Association for Sexual Equality (LASV). 1997–2000 co-founder and legal adviser of the Homosexuality Information Centre (HIC). Since 2000, board member of HIC. In 1998/9 employed by the Latvian National Human Rights Office to carry out research on lesbian and gay rights within international human rights and national law. Author of the Latvian partnership draft law submitted to the Latvian Parliament in 1999.  
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### Lithuania

Eduardas Platovas: co-founder of the Lithuanian Gay League (LGL) in 1993. Editor of LGL newspapers *Amsterdamos* and *LGL žinios* (LGL news) since 1994. Editor of LGL website [www.gay.lt](http://www.gay.lt); edited the first brochure on gay and lesbian rights in Lithuanian language “Gay and Lesbian Rights – Human Rights”. Co-ordinator of LGL’s human rights projects, supported by the European Union and the Open Society Institute. Graduated from Vilnius University in 1990 (journalism studies).

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### Malta

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### Poland

Michał Pawłęga – gay activist in Warsaw, president of the board of Lambda Warszawa, biggest gay/lesbian organisation in Poland. Educationalist, interested in democracy and human rights. Since 1999 he has been working as a volunteer in Polish Amnesty International, Gender Group and as a sexual educator in the Polish Society of Family Development.

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Group of Lesbians and Gay People “Allos”  
Phone: +0-604 46 99 15 (Rafał).

Association “Róża”  
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Phone: +0-800 163 006 HIV/AIDS advice

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Meetings in bar “Odłot”, Pl. Po Farze 2 (only on Wed. and Fri. after 9 pm)  
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**WARSZAWA**

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**Romania**

Adrian Relu Coman has a BS and was 2000 Human Rights Advocate at Columbia University, New York. He has been working as a teacher and for several human rights organisations in Romania since 1993. He is executive director of ACCEPT (Bucharest Acceptance Group) and a member of the executive board of ILGA-Europe since 1997.  
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**Slovakia**

Miriam Molnárová has a degree in economics and politics. After working in HIV/AIDS prevention she has recently taken an International Policy Fellowship at the Open Society Institute, Budapest. She lives in Budapest and in Slovakia.  
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**Slovenia**

Tatjana Greif: MA in Archaeology, PhD candidate in Gender der Archaeology, a LGBT activist since early 1990s. She is currently working as a programme manager of Slovenian lesbian group ŠKUC-LL. She is involved in various educational and anti-homophobic projects, gay and lesbian studies, political activism, registered partnership bill, journalism, gay and lesbian human and civil rights promotion, member of several editorial boards

(Lesbo, Vizibilija, Delta, Lesbomania). Since 1998 she is a member of executive board of ILGA-Europe.

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## Turkey

Kürşad Kahramanoğlu has been campaigning against racism, and working for LGBT rights for more than 20 years. Currently he is the international officer of UNISON, a public sector trade union and the largest trade union in the UK. He is also the co-secretary general of ILGA.

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## EU law and enlargement

Mark Bell is a lecturer in law at the University of Leicester, England. He previously studied for a doctorate at the European University Institute, Florence. His principle research interests concern EU law in the areas of anti-discrimination, immigration and asylum, and healthcare. His doctoral thesis was on racial and sexual orientation discrimination and EU law.

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# NOTES

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